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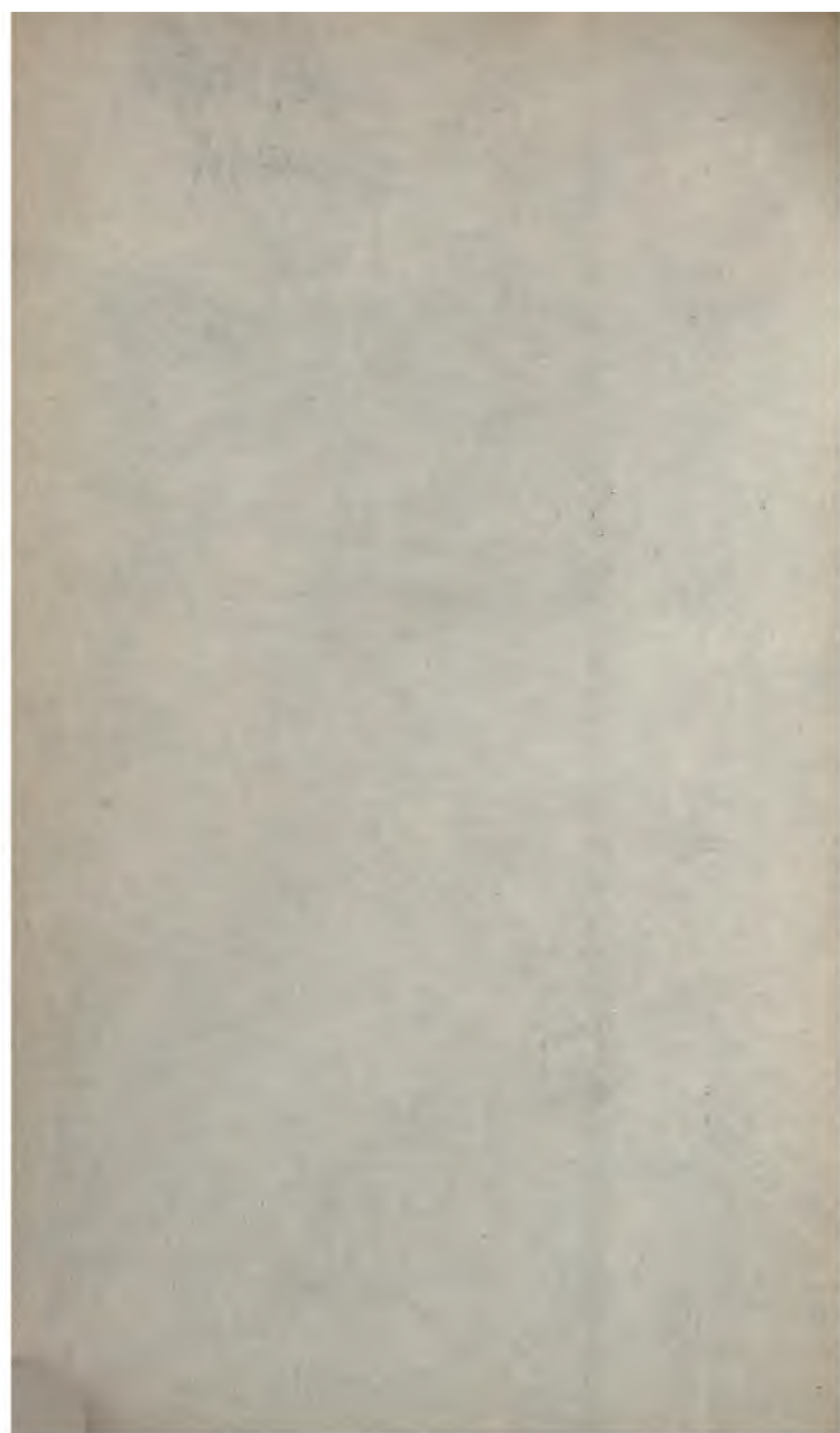
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ONTARIO. COMMISSIONER ON THE NORTHERN AND WESTERN
BOUNDARIES.

A REPORT
ON
THE BOUNDARIES
OF THE
PROVINCE OF ONTARIO.

115434

BY
DAVID MILLS, M.P.



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REPORT ON THE BOUNDARIES OF THE PROVINCE OF ONTARIO:

Part I.

WESTERN BOUNDARY OF ONTARIO.

Differences having arisen between the Government of Ontario and the Government of Canada, as to the boundaries between the Province of Ontario and the Territories of Canada, which were formerly in the possession of "The Company of Merchant Adventurers of England, trading in Hudson's Bay," I purpose to consider the boundaries in dispute separately, as the law and the facts by which they must be determined are quite distinct. The Western limit of Ontario is to be ascertained, and located by the proper construction of an Act of the Imperial Parliament, of Treaties with the United States, of Orders in Council, of Proclamations and Royal Commissions interpreted by the aid of contemporaneous facts.

The location of the Northern limit can be ascertained with an approximation to exactness, by the facts of history, by acts of State, and by well established principles of Public Law.

It will not be necessary, in order to determine the location of the Western boundary of Ontario, to state with any great degree of minuteness the limits of Canada, while in the possession of France. Before its conquest by England, and its cession under the Treaty of Paris in 1763, the undisputed possessions of France in North America may be stated, in general terms, to have been all that part of North America lying North of the St. Lawrence, the great Lakes and the River Illinois—except a small portion of Territory, about the trading posts of the Hudson's Bay Company, in the vicinity of Hudson's Bay—

and nearly the whole of the Western half of the valley of the Mississippi. The French authorities denied the right of England or her Colonies to any territory west of the Alleghany Mountains, or north of the watershed of the St. Lawrence.

At first, the French undertook to extend their possessions by force of arms. In this they failed. Subsequently guided by the good sense of Frontenac and Calliers, they sought to establish friendly relations with the Indians. The French settlers in North America gave but little attention to agriculture, being mostly engaged in the Fur Trade. Many allied themselves with the Indians, and were governed by Indian usages. The Government of Canada, in order to prevent mischief, maintain peace, and preserve some of the elements of a Christian civilization, subjected these *coureurs des bois* to its control in the most distant parts of its extensive Territory. No Canadian was suffered to trade with the Indians, but by license from his Governor, and under such regulations as that license ordained. The Government divided the country into hunts, as it was divided amongst the Indians themselves. No license extended beyond the limits of a single hunt; and the Canadian hunter strictly conformed to the practice of the tribe to whose hunt his license extended. He was their partner or companion in the chase, and their agent in the disposal of their furs. His license forbade him, under severe penalties, to trade or to hunt, on any account whatever, beyond the limits assigned him. In this way the French authorities, at a very early day, acquired a regular and exact knowledge of a very great extent of country. When the Governor had issued for any hunt as many licenses as its commerce would bear, it became necessary, as the number of French Canadian hunters and fur traders increased, to extend the sovereignty of France by new discoveries, and to make constantly fresh acquisitions of territory.

It was in this way, as well as by the expeditions of La Salle, Tonti, Marquette, Joliet, Alouez and other explorers, that the authorities of France, in Canada, acquired a knowledge of all

the waters, portages, passes, and posts which they believed would enable them to establish their supremacy in North America. While the *coureurs des bois* were pursuing their own interests, they acquired, for the Government of Canada, a military knowledge of the ground; and as their interests were identical with the interests of the various Indian Tribes, with whom they mingled, they enabled the Canadian Governor to make every trading post a fort, and put a garrison into it when he deemed it necessary.

The policy of the French had been such as to secure the good will of the Indians; and while a few Frenchmen spread themselves, unmolested, over a great portion of the continent, the English colonists could not safely travel far from their settlements into the interior, and the servants of the Hudson's Bay Company, for more than eighty years, never ventured away from the forts which the company had erected upon the shores of that Bay.*

* Governor Pownall thus classifies the Indian tribes in the English and French interest in 1756:—

In the French interest:

Eastern Indians.

Esquimaux.
St. John's.
Micmacs.
Penobscots.
Norridgewalks.
Abenakias.
St. Francis.
Caughnawagas.
Shawanese.
Oswegatchie.
{ Delewares, Shawanese, except }
 a few upon the Susquehana }
 river.

Western Indians.

Sioux.
Nadouesseries.
Illinois.
Tawigtwies.
Piankashawaes.
Wawyactaes.
Picques.
Kaskaskies.
Creeks.

Northern Indians.

Assinipoles.
Adirondacks.
Algonquins.
Otlawas.
Hurons.
Missasagues.
Outogomies.
Miscontinis.
Sakis.
Christeneaux.
Alinipogies.
Nipissenes.

Southern Indians.

Osages.
Arkansaws.
Choctaws.
Passimacs.
Adages.

Indians in the English interest :

Mohawks.
Mehikanders.
Cawtabas.

Cherokees.
Chickasaws.
The Five Nations.

—Pownall on the Colonies, vol. 2, p. 205.

At Detroit, Mackinaw, Green Bay, St. Josephs, and in the Illinois country, colonies were formed, and the country was taken possession of, in the name of the King of France. As early as 1682, La Salle explored the valley of the Mississippi, to the mouth of that river, and took formal possession of the country, which he designated the country of Louisiana.*

The wars in which France was soon after engaged upon the Continent of Europe, and the murder of La Salle, checked for a time, French colonization in North America.

In 1688, a census of all the French upon this continent showed a population of only 11,249. The English colonists at that time, were at least twenty times as numerous. The country of the Illinois, or, as it was then frequently called by the French, Upper Louisiana, seems to have been occupied, without interruption, by French Canadians, from the time of La Salle's first visit in 1679.

On account of the hostility of the Iroquois, the earlier French explorers were cut off from Lakes Ontario and Erie,

* "A process verbal" says Albach, "in the French Archives describes the ceremony with which possession was taken of the country, in the name of the French King. It thus proceeds :

" 'We landed on the bank of the most Western Channel, about three leagues from its mouth. On the 7th, M. de la Salle went to reconnoitre the shores of the neighbouring sea, and M. de Tonti likewise examined the great middle channel. They found these two outlets beautiful, large, and deep. On the 8th, we reascended the river, a little above its confluence with the sea to find a dry place, beyond the reach of inundations. The elevation of the North Pole was here about twenty-seven degrees. Here we prepared a column and cross, and to the said column we affixed the arms of France with this inscription : 'LOUIS LE GRAND, ROI DE FRANCE ET DE NAVARRE, REGNE, LE NEUVIEME AVRIL, 1682.'

" 'The whole party under arms chanted the *Te Deum*, the *Exaudi*, the *Domine Salvum fac Regem* ; and then after a salute of firearms, and cries of *Vive le Roi*, the column was erected by M. de la Salle, who standing near it said with a loud voice in French : 'In the name of the Most High, Mighty, Invincible and Victorious Prince, Louis the Great, by the grace of God, King of France and of Navarre, Fourteenth of that name, this the 9th day of April, 1682, I, in virtue of the Commission of his Majesty which I hold in my hand, and which may be seen by all whom it may concern, have taken and do now take in the name of his Majesty, and of his successors to the Crown, possession of this country of Louisiana, the seas, harbours, ports, bays, adjacent straits, and all the nations, peoples, provinces, cities, towns, villages, mines, minerals, fisheries, streams, and rivers within the extent of the said Louisiana, from the mouth of the great river St. Louis, otherwise called the Ohio, &c., and this with consent of the (nations) with whom we have made alliance, as also along the river Colbert or Mississippi, and the rivers which discharge themselves therein, from its source beyond the country of the Sioux. * * * * * As far as its mouth at the sea or Gulf of Mexico, and also the mouth of the river of Palms, upon the assurance we have had from the natives of these countries, that we are the first Europeans who have descended or ascended the said river Colbert (Mississippi); hereby protesting against all who may hereafter undertake to invade any or all of these aforesaid countries, peoples or lands, to the prejudice of the rights of his Majesty acquired, by the

and their route to the upper lakes and the valley of the Mississippi, was by the way of the Ottawa, Lake Nipissing, French River, and Lake Huron. It was this exclusion of the French from what is now the settled part of the Province of Ontario, by the Iroquois, that formed the basis of the claim of the colony of New York to the territory between the Ottawa and Detroit rivers. Marquette reached the Mississippi by passing through Green Bay, Fox River, Lake Winnebago, and thence down the Wisconsin.

The route followed by La Salle was from Niagara through Lakes Erie, St. Clair, Huron and Michigan to the river St. Joseph. Up that river to the nearest point of the Kankakee—a branch of the Illinois—and thence down the Kankakee and Illinois rivers into the Mississippi.

About the year 1716, another route was discovered from the upper part of Lake Erie up the Miami to what is now the site of Fort Wayne, and thence across a portage to the Wabash, and down the Wabash and the Ohio, into the Mississippi.

At a still later period, a fourth route was opened from Presqu'Isle, on Lake Erie, over a portage fifteen miles in length, to a point on French Creek, now Waterford, in Pennsylvania, and thence down that stream to the Alleghany and the Ohio. Along these various routes communication was kept up between the people of Montreal and Quebec, and the settlers and the traders upon the Mississippi and its tributaries.

Many trading posts and forts were established not only

consent of the nations dwelling herein. Of which and of all else that is needful, I hereby take to witness those who hear me, and demand an Act of the notary here present, as required by law.

“To which the whole assembly responded with shouts of *Vive le Roi*, and with salutes of firearms, and the said Sieur de la Salle, caused to be buried at the foot of a tree, a leaden plate, on one side of which were engraved the arms of France, and upon the other side an inscription in Latin, with the name of the King, the date, the number in the expedition, and the extent of the river which they had navigated.”

By this act the foundation of the claim of France to the Mississippi valley, according to the usages of European nations, was laid.

On the 24th of July, 1684, twenty-four vessels sailed for America, four of which containing two hundred and eighty persons, was destined for La Salle's new country, the famed Louisiana. See, also, Falconer's Mississippi Spark's Life of La Salle; and Parkman's Discovery of the Great West.

upon Lakes Superior and Nipigon, but also upon Lake of the Woods, Lake Winnipeg, the upper Missouri, the Red River of the north, and the Saskatchewan.

is/ Agriculture was neglected, except at Detroit, and at the colonies in Illinois. Forts were built at many other points to protect the traders, and to make secure the ascendancy of the French over the Indians. As early as 1721, Charlevoix predicted that the posts in Illinois would become the granary of Louisiana; and in 1746, there were sent from these colonies to New Orleans fifty tons of flour, besides a large quantity supplied to the Indians.* Two years later M. Vaudreuil enumerated ~~its~~ productions, among which were flour, corn, bacon, hams, and various other edibles. I make these statements for the purpose of showing that small colonies of French were scattered over various parts of the continent, from the Gulf of St. Lawrence to the Mississippi, advantageously planted to secure the fur-trade, to form the nuclei of larger settlements, and to keep the English colonies confined within their settled limits, south of the water shed of the St. Lawrence, and east of the Alleghany mountains.

The policy of France in extending her possessions, necessitated cautious watchfulness on the part of England and her colonies. The French rested their claim to the whole valley of the Mississippi upon the explorations of Marquette and La Salle, upon actual occupation, and upon the construction they gave to the Treaties of Ryswick, Utrecht, and Aix-la-Chapelle. With characteristic negligence, the British plenipotentiaries, at Aix-la-Chapelle, had left their boundary along its whole line, determined only by the very vague agreement, that it should be, when peace was restored, what it had been before the war began. Previous to the war it had, for a quarter of a century, been a matter of dispute. The Treaty simply postponed a settlement. In this doubtful condition of undetermined limits of sovereignty, the two peoples made haste to

* Imlay says that 800,000 pounds of flour—a quantity equal to 4,285 barrels—was exported in 1746 from Illinois to New Orleans.

occupy as much of the disputed territory as possible, without flagrantly violating their treaty obligations. The English claimed all the country lying west of their colonies upon the coast. They based their claim upon prior occupation of the coast, upon opposite constructions of treaties, and upon the cession to them of Indian rights by the Indians themselves.

The charters granted by the kings to all the old colonies, expressly extended their grants westward to the South Sea. These claims, though held in abeyance, were never relinquished. The English colonies being fixed agricultural communities, seeking to draw their wealth from the soil, rather than by profits upon trade with the Indians, were, for this reason, not likely to explore the country further than they were prepared to colonise it; yet they were not willing that their opportunity for indefinite expansion should be destroyed, by a loss of a large part of the territory covered by their charters.

The French colonies were trading, military, and missionary establishments, and it is easy to understand why they became familiar with the whole valley of the Mississippi, before the English colonists passed the Alleghanies.

The country beyond the mountains was not, however, wholly unknown to the English.

Explorations had been made by means of individual enterprise, and efforts were put forward at a very early day to induce the English Government to colonise the valley of the Mississippi. Charles I., in 1630, granted to Sir Robert Heath all the continent between thirty-one and thirty-six degrees north latitude, from the Atlantic to the Pacific Ocean. In 1638, it was consigned to the Earl of Arundel. It was afterwards transferred to one Coxe.* It is related by his son, that in the prosecution of this claim, the valley of the Mississippi was explored by Col. Wood and a Mr. Needham between 1654 and 1664; that in 1698, several persons went from New England nearly five hundred miles west of the Mississippi; that Dr. Coxe

* See Coxe's Memorial to King William, 1699.

had fitted out two vessels under Captain Barr, one of which ascended the Mississippi, in 1698, a hundred miles; and that they designed to establish there a Huguenot settlement; but the project was frustrated by the death of its chief promoter, Lord Lonsdale. The south pass over the Rocky Mountains is described. The country west of the Mississippi is said to be well suited for the use of camels, and the gold of California is noticed. The statements in this remarkable book, being without contemporary corroboration, were never relied on as the basis of any right to the Province of Carolana.*

As early as 1710, Alexander Spotswood, the Governor of Virginia, induced the Legislature of that province to make an appropriation to defray the expenses of exploring the country beyond the Alleghanies, and to discover, if possible, a pass to the Ohio or Mississippi valley. He presented a memorial to the English Government in which he described the French plan of military occupation, and pointed, out with wonderful sagacity, the effort that would be made to keep the English east of the mountains.†

The chief ground upon which the British claimed the country west of the Alleghany mountains was, that they had purchased the country from the Iroquois nations.

The Iroquois held the country by original possession, or by conquest, from the Ottawa to the Mississippi. They had left most of the tribes they conquered to manage their internal affairs as they chose, but they claimed, as conquerors, the right to dispose of the country. On this right thus acquired the Iroquois confederacy sold to the British Government what is now Western Virginia, Kentucky, and a large part of Illinois. In 1684 they made a deed of sale to the British authorities, at Albany, of the country from the Illinois river eastward into Canada,‡ and in 1726 they conveyed all their lands in trust to

* Coxe's Description of Carolana, called by the Spanish Florida, and by the French Louisiana, London, 1772.

† See Graham's Colonial History.

‡ Plain Facts: Philadelphia, 1781, pp. 22-3.

England to be protected and defended by his Majesty to and for the use of the grantors and their heirs. * † ‡

* Pownall's Administration of the Colonies, vol. 1.

† In 1673 Allouez and Dablon found the Miamis upon Lake Michigan dreading a visit from the New York Confederates. In 1680 La Salle found them upon the Illinois, and Tonti was in the country when they drove the Illinois beyond the Mississippi; but through the influence of the French, confederacies were formed against them, and their title to such extended regions became very questionable. See Colden's History of the Iroquois; Early History of Pennsylvania; and Parkman's Discovery of the Great West.

‡ The French nation, having always been desirous to extend their dominion in America, have lost no opportunity of encroaching upon their neighbours there. And although your Majesty and your royal ancestors have an uncontested right as well by discovery as possession to the several British colonies in America; yet the French Kings have at sundry times made grants thereof to their subjects. Such were the letters patent of Louis the 13th, in favour of the French West India Company, bearing date the 29th of April 1627; and those of Louis the 14th to Monsr. Croisot, sometime since surrendered to the United India Company of France, upon which they build their title to the Mississippi. Many other instances of like nature might be given, were they necessary to the present purpose; but these two, which comprehend almost all your Majesty's dominions in America, may be sufficient to shew the unlimited inclination the French have to encroach upon your Majesty's territories in those parts.

However, as the French are convinced that a charter without possession can never be allowed by the law of nations to change the property of the soil; they have employed another artifice, and without embarrassing themselves about former discoveries made by the subjects of other Princes, have built small forts at the heads of lakes and rivers along that vast tract of land from the entry of the River St. Lawrence to the embouchure of the Mississippi into the Bay of Mexico; not so much with the intention probably to bound their own territories, as to secure what they have already got, till a more favourable juncture shall give them occasion to make further intrusions upon their neighbours. And if the late war in Europe, where the Allies made so successful efforts against the exorbitant power of France, had not found Louis the 14th employment at home, it is very likely the French would have been much more formidable than they now are in America. Notwithstanding the treaty of neutrality for those parts made in London in 1686, ought to have secured to Great Britain the several colonies whereof your Majesty's royal predecessors stood possessed at the time of making the said treaty, but the little regard the French have had to that treaty will evidently appear by the evasions and frivolous pretences set on foot by their Ministers during the debate in the year 1687 at London, where the Lords Sunderland, Middleton and Godolphin were appointed by King James to confer with the then French Ambassadors, Monsr. de Barrillon and the Sieur Dusson de Bonrepeaux concerning the boundaries of the Hudson's Bay Company, and although that Conference terminated in the aforesaid treaty of neutrality, together with a resolution of settling the boundaries between the English and French colonies in America by proper commissaries, which resolution has since been enforced by the 10th article of the Treaty of Utrecht; yet the French could never be induced to enter sincerely upon so necessary a work, notwithstanding commissaries were lately appointed for that purpose, and met with others deputed by the French Court at Paris. —London Doc. 22; Sept. 8, 1721; N. Y. Hist. Col. vol. 5. pp. 619-20.

In 1744 the Treaty of Lancaster, and in 1752 the Treaty of Logstown, were made, renewing the provisions of former treaties between England and the Iroquois, and large tracts of land were granted to various companies for purposes of colonization in the Valley of the Ohio. *

Upon the 10th of May 1744, Vaudreuil wrote to the Government of France, pointing out the danger to the French possessions of allowing the English to build trading houses among the Creeks.

In the summer of 1749, Gallissoniere, who was then Governor of Canada, resolved to place in the valley of the Ohio, evidences of the French possession of the country, sent Louis Celebron with a company of soldiers to bury lead plates, in the mounds, and at the mouths of rivers, on which were written the claims of the King of France to the river and land on both sides, as a possession enjoyed by preceding kings, maintained by their arms, and by treaties; especially by the treaties of Ryswick, Utrecht, and Aix-la-Chapelle.

When the English colonists crossed the mountains, the French were collecting military stores on Lake Erie. They erected a fort at Presqu'Isle in the north western part of Pennsylvania, Fort Le Bœuf on French Creek, Fort Venango at the junction of French Creek with Alleghany river, and nearly opposite to Fort Venango, Fort Michault, and Fort Du Quesne at the junction of the Alleghany and Monongahela rivers. All these forts were erected in 1753 and 1754. Washington was sent by Dinwiddie, the Governor of Virginia, to the commander of the French forces in the wilderness of North-western Pennsylvania, to demand from them a statement of their object in invading the British possessions; to ascertain their numbers on the Ohio; how they were likely to be assisted from Canada; what forts they had erected, and where; how they were garrisoned; and what had given occasion to the expedition.† These instructions were given in Oc-

* Early History of Pennsylvania, App. 12. Plain Facts, pp. 22-3.

† Spark's Washington, Vol. 2.

tober, 1753. During Washington's absence, the Ohio Company, which had, five years before, received from the British Government, a large grant of land, west of the mountains, had taken measures to fortify and settle the point of land between the Alleghany and Monongahela rivers upon which Fort Du Quesne was soon after erected. But when Washington returned with the letter of St. Pierre, the commander of the French troops, it was evident that he was come to hold the country by force, and victory alone could restore it to the English colonists. The Virginians prepared for active hostilities, but the legislatures of New York and Pennsylvania, when called upon for aid, began discussing the question whether the French had really invaded his Majesty's dominions.* In the spring of 1754, Contrecoeur, who had become commandant of the French forces upon the Ohio, demanded the surrender, without delay, of the unfinished fort of the Ohio Company. He asked by what authority they had come to fortify themselves within the dominion of the king, his master; he declared their action to be so contrary to the treaty of Aix-la-Chapelle, that he knew not to whom to impute such usurpation, as it was incontestible that the lands along the Beautiful (Ohio) river belonged to the King of France. Ensign Ward, who, with a few troops, was then in charge of the fort, was ordered to retreat peacefully with his men, from the lands of the French King, and not to return.† Ward surrendered the fort, and retired up the Monongahela. The fort of the Ohio Company was completed by the French, and was, while in their possession, known as Fort Du Quesne. After this came the defeat and death of Jumonville, and the surrender of Fort Necessity by Washington.‡

Both the governments of England and France expressed

* Proud's History of Pennsylvania : New York Colonial Documents : London Documents.

† The letter of Contrecoeur will be found in Craig's History of Pittsburg, also in the Pownall Manuscripts in the Library of Parliament, Canada.

‡ Spark's Life of Washington, Vol. 2.

their desire for peace. In January, 1755, France proposed to restore everything to the state it was in before the last war, and to refer all disputes to the Commissioners at Paris. On the 22nd, England replied that the west of North America must be left as it was at the treaty of Utrecht. On the 6th of February, France answered that the claims formerly put forward by England were untenable, and proposed that the English should withdraw east of the Alleghany mountains, and the French to the west of the Ohio river. No answer was made to this proposition until the 7th March, when it was agreed to by England, provided France would destroy all her forts upon the Ohio and its branches. This the French Government refused to do.* It was at this time rumoured, that, in case of war, the Indians, heretofore allies of England, would side with France; and French forts along the Ohio and its tributaries, would have enabled both French and Indians to overawe the more western of the English settlements. This was a proposition to make the country between the mountains and the Ohio, neutral territory, which France wished to remain in a condition to control. The two Governments failing to agree upon a conventional boundary, the English Government stood by what they regarded as their rights, recognized by France in the treaty of Utrecht, in which the Five Nations are declared to be under the protection of Great Britain; and in a memorial delivered to the Duke Mirepoix on the 7th of June, 1755, they observe: "As to the exposition which is made in the French memorial of the 15th Article of the Treaty of Utrecht, the Court of Great Britain does not think it can have any foundation, either by the words or the intention of the Treaty.

"The Court of Great Britain cannot allow of this article as relating only to the persons of the savages, and not to their country. The words of the Treaty are clear and precise, that is to say, the Five Nations or Cantons are subject to the

* Stanley to Pitt. Thackeray's Chatham, Vol. 2. p. 581. Instructions to Varin, N. Y. Paris Documents 11, 2. Instructions to Vaudreuil, N. Y. Paris Doc., 10, 8.

dominion of Great Britain, which, by the received exposition of all treaties, must relate to the country as well as to the persons of the inhabitants; it is what France has acknowledged in the most solemn manner. She has well weighed the importance of this acknowledgment at the time of signing the Treaty, and Great Britain can never give it up. The countries possessed by these Indians are very well known, and are not at all so undetermined as it is pretended in the memorial; they possess and make them over, as other proprietors do in all other places.

Whatever pretext might be alledged by France, in considering these countries as the appurtenances of Canada, it is a certain truth that they belonged, and (as they have not been given up or made over to the English) belong still to the same Indian nations, which by the 15th article of the Treaty of Utrecht France agreed not to molest: *nullo in posterum impedimento, aut molestia afficiant.*

“Notwithstanding all that has been advanced in this article, the Court of Great Britain cannot agree to France having the least title to the River Ohio and the territory in question.

“Even that of possession is not, nor can it be alleged on this occasion, since France cannot pretend to have had any such before the Treaty of Aix-la-Chapelle, nor since, unless it be that of certain forts unjustly erected lately on the lands which evidently belong to the Five Nations, or which these have made over to the Crown of Great Britain or its subjects, as may be proved by treaties and acts of the greatest authority. What the Court of Great Britain maintained, and what it insists upon, is, that the Five Nations of the Iroquois acknowledged by France are, by origin or by right of conquest, the lawful proprietors of the River Ohio and the territory in question. And as to the territory which has been yielded and made over by these people to Great Britain, which cannot but be owned must be the most just and lawful manner of making an acquisition of this sort, she re-

claims it as belonging to her, having continued cultivating it for above twenty years past, and having made settlements in several parts of it, from the sources even of the Ohio to the Pichawillanes, in the centre of the territory, between the Ohio and the Wabache."

In the war which followed, the French proved that they knew best how to manage the Indians, and they succeeded in a way the English were never able to rival, in attaching the Indians to their cause. The Indians said that the French treated them kindly, while the English settled upon their lands for their own benefit, spoiled their hunting grounds, and when they asked for arms and aid, forsook them, and left them exposed to their enemies.* Both Washington and Braddock received their offers of assistance coldly, and treated them as slaves.† The French, on the contrary, appeared among them, not so much as masters, as companions and friends. When peace with France was concluded, the Indians under Pontiac were forming themselves into a confederacy, embracing all the tribes from the Susquehanna to the head waters of the Mississippi, for the purpose of holding the entire country west of the Alleghany mountains. "Be of good cheer, my fathers," said the tribes of the west to the French commander of Fort Chartres, in Illinois, "do not desert thy children; the English shall never come here so long as a red man lives. Our hearts are with the French; we hate the English, and wish to kill them all. We are all united; the war is our war, and we will continue it for seven years. The English shall never come into the west." The Indians were determined to destroy the forts, and the weak and scattered garrisons found throughout their dominions. Fort Sanduskey, Fort Miami, at the head of navigation upon the Miami river, Fort Owatanon in Indiana, Fort Mackinac, the Fort on the St. Joseph river, south of Lake Michigan, Forts Presqu'Isle, Le

* Chief of the Iroquois at Easton, 1758.

† Thomson's Inquiry into the Causes of the Alienation of the Delawares and Shawanese. London, 1758; and Craig's Olden Time.

Bœuf, and Venango, were all taken by the Indians, and most of the garrisons were massacred.* Forts Pitt and Detroit had to endure terrible sieges; and it was not until they were informed by Noyen, the French commandant in Illinois, that France was conquered, that Canada would remain in the possession of the English, and that the French could not come to their assistance, that they were disposed to make peace.† It was not until the close of Pontiac's war that the English could accept the surrender of the Illinois country.

The long-continued complaints of the Indians before the war of Pontiac made a strong impression upon the minds of English statesmen, and led to a change in the conduct of Indian affairs. They had been before removed from the supervision of the Colonial Governments; and when the conquest of Canada was completed, and the Treaty of Paris ratified, there were men in England, among whom was Lord Hillsborough, who were (both to avoid trouble in the future with the Indians, and because of the spirit of independence manifested by the colonists,) opposed to permitting settlements to be formed beyond the Alleghanies; and this was declared, by the proclamation of the 7th of October, 1763, to be, *for the present*, the policy of the Government. That proclamation

* One only of the forest garrisons escaped, by the good conduct and address of its commandant. Lieutenant Gorell, in command of Green Bay, devoted himself to the task of conciliating the neighbouring savages. The Menemonies were sharers in the conspiracy, but they were attached to Gorell, and delayed the execution of the work assigned to them. On hearing of the fall of Mackinaw, Gorell called a council of their chiefs, told them he was going thither to punish the enemies of his king, and offered to leave the fort in the meantime in their care. The chiefs were divided. The warriors were waiting to strike the meditated blow; but providentially at this juncture a deputation of the Dacotahs appeared to denounce the vengeance of that powerful confederacy against the enemies of the English. The Menemonies laid aside their warlike designs. Gorell and his garrison passed down the bay, and along the lake to Mackinaw, under their escort, ransomed Ethrington and twelve of his men, and passed, by way of Lake Huron and the Ottawa river, to Montreal.—*Albach's Annals of the West*, pp. 168, 169.

† See Bancroft's History of the United States, vol. 5, chap. 7, and Parkman's History of the Conspiracy of Pontiac, where the authorities are cited. Gayarre attacks Noyen for his humanity.

carved out of Canada the Province of Quebec. It annexed Cape Breton and Prince Edward's Island to Nova Scotia. It divided the Province of Florida, which had been ceded by Spain, and added to the western part, territory acquired from France by the Treaty of Paris. It added to the Government of Grenada the Grenardines, Dominico, St. Vincent and Tobago Islands. It annexed to the Province of Georgia all the lands lying between the Rivers Altamaha and St. Mary's.

General Murray advised the English Government to make Canada a military colony, and to extend it westward to the Mississippi, in order to overawe the older colonists.* Shelburne favoured the boundaries which were afterwards set forth in the proclamation.† Egremont rejected the proposition, and insisted on the Mississippi as the western boundary.‡ Shelburne adhered firmly to his opinion, and after considerable delay, his view for a time prevailed.§ The Earl of Egremont, on the 19th of September, informed the Lords of Trade that "His Majesty is pleased to lay aside the idea of including within the government of Canada the lands which are to be reserved, for the present, for the use of the Indians."**

Col. George Crogan, the Deputy of Sir Wm. Johnson, the Northern Superintendent for Indian affairs, having gone to England in 1764, was recommended by Sir William Johnson to the Lords of Trade and Plantations as a person whose thorough acquaintance with Indian matters, would enable him to impart to the Board much valuable information.†† I find among the papers of the Lords of Trade and Plantations, a

* M. Frances au Duc de Choiseul, 2 Sep., 1768.

† Lords of Trade to Secretary of State, 8th June, 1763.

‡ Secretary of State to Lords of Trade, 14th July, 1763.

§ Lords of Trade to the Secretary of State, 5th August, 1763. Secretary of State to the Lords of Trade, 19th Sep., 1763.

** The king said Lord C. J. Mansfield had advised him to show favour to Shelburne in order to play him and Egremont against each other, and by that means keep the power in his own hands.—*Grenville papers*, vol. 2, p. 238.

†† See Simcoe Papers, *Mss.*, vol. 1, Library of Parliament, Canada.

letter from Col. Crogan, which is not dated, but which, it is highly probable, was written at this time. He therein sets forth what he considers the best plan of dealing with the Indian Territories. He says, "That a natural boundary should be made between them (*i. e.* the Indians,) and us across the frontiers of the British Middle Colonies, from the heads of the River Delaware to the mouth of the Ohio, where it empties into the Mississippi; that the lands west of such a line should be reserved for the hunting grounds of the Six Nations, and the several tribes dependent on them, and that a reasonable consideration be given them as they are the original proprietors of that tract of country, for all the land east of such boundary. This, in all probability, may be effected, and is the likeliest method to remove all suspicions of us.

"The Indians, before the late war or the conquest of Quebec, considered us in the light of a counterpoise to the power of the French, their ancient enemies, and were steady friends of the English on that account;* but since the reduction of Canada, they consider us in a very different and less favourable light, as they are now become exceedingly jealous of our growing power in that country. It is not necessary to enter into any part of our conduct towards them since the reduction of Canada, which might have raised their jealousies, or whether the French used any measures to spirit them up to what they have done; we know them now to be a very jealous people, and to have the highest notions of liberty of any people on earth, and a people who will never consider consequences where they think their liberty likely to be invaded, though it may end in their ruin; so that all that can be done now is to prevent such a defection of the Indians for the future, by the boundary and good treatment.

"By the concessions made by his Majesty, at the late Treaty of Peace, *the country lying west of the Ohio to its mouth, and up the Mississippi to its sources, appears to be the boundary be-*

* Mr. Crogan here refers to the Iroquois, Delaware and Shawanese Indians.

tween the French and us, in that part of the country, and of course become our frontiers ; as the west side of the Mississippi will no doubt be settled by the French.* I would offer to your Lordship's consideration whether it would not be good policy at this time, while we certainly have it in our power, to secure all the advantages we have got there by making a purchase of the Indians inhabiting the country along the Mississippi from the mouth of the Ohio up to the sources of the River Illinois, and there plant a respectable colony in order to secure our frontiers and prevent the French from any attempt to rival us in the fur trade with the natives, by drawing the Ohio and Lake Indians over the Mississippi which they have already attempted by the last accounts we have from Detroit. From planting this new colony, many great advantages would arise to this kingdom, as well as to his Majesty's subjects in North America ; it would extend trade and commerce with the furthestmost nations of Western Indians hitherto unknown to us, which would enable the trading people in the colonies to import more of the manufactures of this kingdom than they have heretofore done, which is an object of the greatest consequence to a trading people ; it would extend his Majesty's settlements in America and make his subjects appear more formidable in the eyes of the Indians, which is now become absolutely necessary, in order to preserve the peace between them and us ; it would cut off all the communication between the French and those nations settled over the large tract of country on this side of the Mississippi, and gives us the absolute dominion over all the Upper Lakes—Huron, Michigan and Superior, and bids fair to give a lasting peace to all his Majesty's southern colonies : besides, from this colony, in a very few years we should be able to supply with provisions of every kind the several posts or marts that may be erected for trade with the natives on much easier terms, than they have or can be supplied

* This observation fixes the date of this communication, as it became known in 1765 that France had ceded the country west of the Mississippi to Spain.

from any of our colonies. At present it may be objected that the establishing such a colony, so far from the sea, will be attended with too great an expense to the nation, which may be easily answered. The fertility of the country and the fineness of the climate is now known to us which is sufficient to encourage industrious people to settle in it in a very little time without any expense to the nation, or hindrance to the growth of the present colonies, and I dare say that people enough will be found that will undertake it." *

There is one part of Col. Crogan's recommendation which was scarcely practicable at the time it was made—that relating to the Indian reservation, and it is evident that he was not aware of the extent to which the Crown had already alienated lands within the limits he proposed to reserve for the Six Nations. Immediately after the treaty of Logstown, in 1748, Lee and Washington of Virginia, Hanbury of London, and others, formed an association, called the Ohio Company, and petitioned the king for a grant beyond the mountains. The application was approved of, and the Government of Virginia was ordered to make a grant of 500,000 acres, within the bounds of that colony. Of this grant, 200,000 acres were to be at once located by the Company; and if one hundred families were settled within seven years, the grant was to be free from quit rent for ten years. The Company agreed to build a Fort sufficient for the protection of the settlement. Other companies were formed, about the same time, within the Province of Virginia, to colonize the West. On the 12th of June, 1749, 800,000 acres were granted to the Loyal Company, *from the line of Canada on the North and West*. In October, 1751, 100,000 acres were granted to the Green Briar Company. In 1757, the books of the Secretary of Virginia show that three millions of acres had been alienated beyond the Alleghaney Mountains. The report of Blair, the Clerk of the Virginia Council (1768 or 1769) states that most of the land grants, west of the mountains within that Province, were made before 1754.†

* New York Historical Documents, vol. 7, pp. 603, 604.

† Quoted by Albach Western Annals, p. 129.

boundary.* A conference was held with them at Johnson's Hall, in May 1765. Sir William informed the Indians that the king, whose generosity and forgiveness they had already experienced, being very desirous of putting an end to the disputes between them and his people, concerning lands, and to do them strict justice, had fallen upon the plan of a boundary between them and his people, as the best method of accomplishing this object; he told them that "the settling of such a division line will be best for both white men and Indians, and he hoped it would be such a line as would best agree with the extent and increase of each Province: he wanted to know in what manner they would choose to extend it, and what they would heartily agree to, and abide by, in general terms." He said he would consult the governors of the Provinces interested as soon as he was fully empowered; and that whenever the whole would be settled, and that it appeared that they had so far consulted the increasing state of the colonists as to make any convenient cessions of ground where it was most wanted, that then they would receive a considerable present in return for their friendship.†

The Indians agreed to the proposition of a boundary line. Within three years, thirty thousand whites settled beyond the mountains. A change of administration took place in England. The contemplated Bill for establishing the boundary and regulating the Indian trade was not brought forward. The letters of Sir William Johnson were mislaid by Ministers, and he received no instructions enabling him to fulfil his engagements with the Indians.‡ The Indians, finding their country everywhere invaded, began to believe they had been duped by the fair promises made by the northern superintendent. A border war was imminent. Many settlers

* The plan of a boundary line having been communicated to the Superintendent for Indian Affairs, they have [though not strictly authorized to do so] made it a subject of discussion and negotiation with the Indians in their respective districts. *Lords of Trade to Earl Shelburne*. N. Y. Hist. Doc., vol. 8., p. 1005.

† N. Y. Hist. Doc. vol. 8, where the correspondence will be found.

‡ See Franklin's letters to his son. *Spark's Life of Franklin*, vol. 4.

were massacred. A detachment of soldiers were sent in 1766, to Redstone creek and Cheat river, to remove those who had settled at these places.*

On the 7th of December, 1767, General Gage, the Commander-in-Chief of the forces in the Colonies, wrote to the Governor of Pennsylvania, on the subject of the Indians' grievances, and of the disregard paid by the western settlers to the several proclamations that had been published; and he declares that the removal of those who had settled on Red Sandstone creek and Cheat river, "has been only a temporary expedient, as they are returned again to the same encroachments in greater numbers than ever." The Governor of Pennsylvania communicated the letter which he had received from General Gage to the Assembly of that Province on the 5th of January, 1768, and eight days after, the Assembly presented a reply to the Governor; and, on the 19th, the Speaker and the Committee of Correspondence informed the London Agents, by order of the House,—“That the delay of the confirmation of the boundary, the natives had warmly complained of, and that although they have received no consideration for the lands agreed to be ceded to the Crown on our side of the boundary, yet that its subjects are daily settling and occupying those very lands.”

The Legislature of Pennsylvania, finding that the Indians were becoming more and more inclined to war, on account of the unauthorized encroachments upon their lands, and not doubting that orders would soon arrive from England to confirm the inchoate treaty of May, 1765, voted one thousand pounds to purchase presents for the Indians upon the Ohio. A conference was held at Fort Pitt, in May, 1768. The Indians said that their grievances had long been known, and were still unredressed; that settlements were still extending further into their country, and some of them were upon their war-path; that the English had laws to govern their people, and it would be a strong proof of the sincerity of their friendship, if

* Plain Facts.

they would remove the settlers from their lands; "they will have time enough to settle the lands after they have been purchased."*

As soon as Sir William Johnson received orders from England, relative to a treaty with the Indians, he at once took the necessary steps to secure a full attendance. Notice was given to the Colonial Governments interested, and to the Six Nations, the Shawanese, and the Delewares, and a Congress was appointed to meet in October, at Fort Stanwix. It was attended by Sir William Johnson and his deputies; by the representatives of Virginia, Pennsylvania, and New Jersey; and by the agents of the traders who had suffered in the war of 1763. Deputies from the Six Nations, the Delewares, and the Shawanese, were present. On the first of November a line was agreed upon beginning at the north, where Canada creek joins Wood creek, and extending south to the Delaware river, down that river to Awandæ creek, up the Creek to Burnett's Hills, west along these hills to the Susquehanna, and from the nearest fork of the west branch of that river to Kittaning, on the Alleghany, and thence down the Ohio to the Cherokee river. At the mouth of Kanawha it met the line of Stuart's treaty with the Cherokees. Beyond this line Sir William Johnson was instructed not to go, as it was Hillsborough's policy to form an unbroken line of Indian frontier, as an impassable barrier to the extension of the colonial settlements, from the Gulf of Mexico to Lake Ontario. But the Six Nations claimed the country to the River Cherokee (now Tennessee) and it was the intention of Sir William Johnson to put an end to their title to lands south of the Ohio.† One deed for a part of this land was made on the third

* Proud's History of Pennsylvania, vol. 2. Colonial Archives of Pennsylvania.

† See the accompanying map from N. Y. Hist., Doc. vol 8, where the treaty also will be found. Bancroft censures Johnson's conduct for treating for territory beyond the Kenawha, and commends the conduct of Stuart, of the Southern Indian Department. See Bancroft's History, vol. 5, ch. 38. Franklin, on the contrary, condemns Stuart for treating with the Cherokees for any territory north of the Cherokee river. See Franklin's reply to the Lords of Trade. Franklin's works vol. 4.

of November, to William Trent, attorney for twenty-two traders whose goods had been destroyed during the war with Pontiac. This tract of land lay between the Monongahela and Kanawha rivers, and was called by the traders Indiana. Two days later a deed was made to the king for the remainder, and the Indians were at once paid. The chiefs of the Six Nations signed for themselves, their allies and dependents. The Shawanese and Deleware deputies did not sign these deeds.* By this treaty the boundary of the territory thrown open for settlement along the middle colonies, was removed "from the sources of the rivers which fall into the Atlantic Ocean, from the west or northwest," where it was "for the present" fixed by the proclamation of 1763, to the Ohio river.

The western boundary of Virginia, became at once the engrossing topic to the people of that Province. Lord Botetourt, who had shortly before become Governor of Virginia, cordially seconded their wishes, and declared he was ready to put in pledge his life and fortune to carry its jurisdiction on the parallel of thirty-six and-a-half degrees North latitude, as far west as the Treaty of Fort Stanwix would permit. † This boundary he was told would give room for settlement for ten or twelve years. ‡

The Earl of Shelburne, on the 5th of October, 1767, addressed a letter to the Lords of Trade, enclosing memorials and petitions which had been presented to the king from English and Colonial merchants, on the state of the Indian trade. He suggested the abolition of the Indian Departments, which had been created at a time when a general union of the Colonies, under the immediate direction of the king was contemplated, with a view, the better to resist the encroachments of France. He intimated that it would be well to trust both the Trade and

* Plain Facts, page 65--104. N. Y.: Hist. Doc. vol 8. Stone's Life of Sir W. Johnson.

† Botetourt to Hillsborough, 24th Dec., 1768.

‡ Lewis & Walker to Lord Botetourt, in Botetourt to Hillsborough, 11th Feb'y, 1769. Bancroft, vol. 5, ch. 38.

the general management of Indian affairs to the different Colonies, subject to the king's disallowance. He then addressed himself to the subject of establishing new colonies. He says :

“ His Majesty likewise commands me to refer to your Lordship's extracts from several letters of Sir Jeffrey Amherst and General Gage, recommending the establishment of further new governments, on the Mississippi, the Ohio, and at Detroit, at one or more of which places *a considerable body of French have been suffered to remain since the peace, without any form of government* ; also, different proposals from private people for undertaking establishments in these parts. Your Lordships will consider the force of the several arguments which are brought in favour of these settlements, setting forth that they will secure to his Majesty's subjects the command of the Fur and Peltry Trade, in preference to the French and Spaniards, preventing any smuggling with them, which, as appears, by the extracts of General Gage's and Mr. Crogan's letters, amounts to so considerable a sum annually as to become a national object ; that they will be an effectual check to the intrigues of those nations, for gaining the affections of the Indians ; that they will promote the great object of population in general, and increase the demand for the consumption of British manufactures, particularly by affording to the Americans an opportunity of following their natural bent for the cultivation of the lands, and offering a convenient reception and cultivation for their superfluous hands, who otherwise cooped up in narrow bounds, might be forced into manufactures, to rival the mother country—an event, which, any other way, it might be difficult to prevent ; that by raising provisions of all sorts to supply such interior garrisons, as it may still be found necessary to keep up, they would greatly contribute to lessen the extraordinary expense accruing, not only from the establishment of the different Forts and the various contingent charges, but also from the necessity of transporting provisions as well as stores to supply the garrisons from the Provinces on the coast, by

the rivers and by the great lakes as well as by the land portage, all which not only occasions an accumulated expense, but also, often reduces the garrisons to great distress, and in case of an Indian war, when alone they can be useful, leaving them in a very precarious situation; that these new Colonies will prove in effect a protection and a security to the old, forming of themselves an exterior line of defence, rendering most of the interior Forts useless, and equally contributing to reduce the present Indian and Military Expense; that being situated behind the other Provinces, they will be of singular use to keep the Indians in awe, and prevent their hostile incursions upon the frontiers to the eastward, while those savages who are hemmed in by our settlements on both sides, must either become domiciliated, and reconciled to our laws and manners, or be obliged to retire to a distance.

“In case your Lordship should think it right to advise his Majesty to establish these new governments, you will consider whether it will be practicable to fall upon such a plan, as will avoid a great part of the expense incurred by the estimates of the new governments established after the peace.”*

William Franklin, son of Benjamin Franklin, the Governor of New Jersey, Sir William Johnson, the Northern Superintendent of Indian Affairs, General Gage, and several fur-traders of Philadelphia, proposed to acquire, for colonization, a great portion of the North West Territory, embracing all the country from Lake Erie to the Mississippi, North of the Wabash and Miami rivers, and south of Fox river and the Wisconsin. The tract was estimated to contain sixty-three millions of acres. Franklin, who had gone to England to promote the Walpole Grant, South of the Ohio, acted as the agent of those who wished to undertake the colonization and government of this vast extent of territory. And in his letters to his son, extending over a period of two years, from April 1766 to April 1768, he puts us in possession of the views of Lord Shelburne, Gene-

* N. Y., Hist. Doc. vol. 8.

al Conway, Lord Clare, and Lord Hillsborough, on the propriety of establishing new Colonies in the country, acquired from France.*

We learn from these communications that Earl Shelburne, who favoured the enterprise, delayed bringing the matter up in Council, for more than a year, until he thought the Lords of Trade could be induced to make a favourable report. The subject was brought under their attention in October, but no report was made until the March following. In the mean time the affairs of the Colonies were taken from under the control of Lord Shelburne, and consigned to a separate Department of State, and Lord Hillsborough was made the first Colonial Secretary. The changes which at that time took place in the Ministry, indicated a change in the Colonial policy. The report of the Lords of Trade, when made, was decidedly adverse to the policy of establishing new Colonies, and pointed towards the adoption of the views expressed by Hillsborough, Murray, and Egremont in 1763—the extension of the Province of Quebec to the Mississippi. They say that “the proposition of forming inland Colonies in America is, we humbly conceive, entirely new, it adopts principles in respect to American settlements different from what have hitherto been the policy of this kingdom, and leads to a system which, if pursued through all its consequences, is, in the present state of that country, of the greatest importance.

“The great object of colonizing upon the Continent of North America, has been to improve and extend the commerce, navigation, and manufactures of this kingdom, upon which its strength and security depend.

“1. By promoting the advantageous fishery carried on upon the northern coast.

“2. By encouraging the growth and culture of naval stores, and of raw materials to be transported hither in exchange for perfect manufactures and other merchandise.

* See Appendix B., consisting of extracts from these letters.

"3. By securing a supply of lumber, provisions, and other necessaries for the support of our establishments in the American Islands.

"In order to answer these salutary purposes, it has been the policy of this kingdom to confine her settlements as much as possible to the sea coast, and not to extend them to places inaccessible to shipping, and consequently more out of the reach of commerce; a plan, which, at the same time that it secured the attainment of these commercial objects, had the further political advantage of guarding against all interfering of foreign powers, and of enabling this kingdom to keep up a superior naval force in those seas, by the actual possession of such rivers and harbours as were proper stations for fleets in time of war. . . . It was upon these principles, and with these views, that Government undertook the settling of Nova Scotia in 1749; and it was from a view of the advantages represented to arise from it in these different articles, that it was so liberally supported by the aid of Parliament.

"The same motives, though operating in a less degree, and applying to fewer objects, did, as we humbly conceive, induce the forming the Colonies of Georgia, East Florida, and West Florida, to the south, and the making those provincial arrangements in the proclamation of 1763,* by which the interior country was left to the possession of the Indians."

This policy the Lords of Trade go on to state would be frustrated by forming settlements in the interior.

"More especially, where every advantage, derived from an established government, would naturally tend to draw the stream of population; fertility of soil and temperature of climate offering superior incitements to settlers, who, exposed to few hardships, and struggling with few difficulties, could, with little labour, earn an abundance for their own wants, but without a possibility of supplying ours with any considerable quantities. Nor would these inducements be confined

* See Appendix F.

in their operation to foreign immigrants, determining their choice where to settle, but would act most powerfully upon the inhabitants of *the northern and southern latitudes* of your Majesty's American dominions; who, ever suffering under the opposite extremes of heat and cold, would be equally tempted by a moderate climate to abandon latitudes peculiarly adapted to the production of those things which are by nature denied to us, and for the whole of which we should, without their assistance, stand indebted to, and dependent upon, other countries."

The Lords of Trade observe that before 1749, the sea coast of the empire in America, from the Province of Maine to the mouth of the St. Lawrence, had been neglected, although it abounded in every species of naval stores; that France had, at an immense expense, attempted, by the war which ended at that period, to wrest the country from Great Britain; that aware of its great commercial value, the country was held, and to further this end, and make the possession more sure, the settlement of Nova Scotia had been promoted, though at a very great expense to the kingdom; that in consequence of the great commercial advantages to be derived from the settlement of the north eastern coast, associations had been formed for that purpose. Ten thousand persons had gone from the other Provinces to settle in Nova Scotia, who had either engaged in the fisheries or become exporters of lumber and provisions to the West Indies, and that many of the principal persons of the Province of Pennsylvania were engaged in the settlement of twenty-one townships of one hundred thousand acres each in Nova Scotia; that the success of these settlements had given encouragement to like settlements in Maine and Massachusetts, in the Islands of St. John and Cape Breton, and in the Floridas. They say "they are therefore fully convinced, that the encouraging settlements upon the sea coast of North America is founded in the true principles of commercial policy; as we find upon examination, that the happy effects of that policy are now beginning to open themselves, in the es-

tablishment of these branches of commerce, culture, and navigation, upon which the strength, wealth, and security of this kingdom depend; *we cannot be of opinion, that it would in any view be advisable, to divert your Majesty's subjects in America from the pursuit of those important objects, by adopting measures of a new policy, at an expense to this kingdom, which in its present state it is unable to bear.*"

The Lords of Trade next proceed to consider the arguments in support of the particular establishments recommended by Lord Shelburne, which they say are reducible to the following propositions:—

"1st. That such colonies will promote population, and increase the demand for and consumption of British manufactures.

"2nd. That they will secure the fur trade, and prevent an illicit trade, or interfering of French or Spaniards with the Indians.

"3rd. That they will be a defence and protection to the old colonies against the Indians.

"4th. That they will contribute to lessen the present heavy expense of supplying provisions to the different forts and garrisons.

"5th. That they are necessary in respect to the inhabitants already residing in those places where they are proposed to be established who require some form of civil government.

"We admit as an undeniable principle of true policy, *that with a view to prevent manufactures* it is necessary and proper to open an extent of territory for colonization proportioned to the increase of people, as a large number of inhabitants, cooped up in narrow limits, without a sufficiency of land for produce would be compelled to convert their attention and industry to manufactures; but we submit whether the encouragement given to the settlement of the colonies upon the sea coast, and the effect which such encouragement has had, have not already effectually provided for this object, as

well as increasing the demand for, and consumption of British manufactures, an advantage which, in our humble opinion, would not be promoted by these new colonies, which being proposed to be established, at the distance of above fifteen hundred miles from the sea, and in places which, upon the fullest evidence, are found to be utterly inaccessible to shipping, will, from their inability to find returns wherewith to pay for the manufactures of Great Britain, be probably led to manufacture for themselves: a consequence which experience shews has constantly attended in greater or less degree every inland settlement, and therefore ought, in our humble opinion, to be carefully guarded against by encouraging the settlement of that extensive tract of sea coast hitherto unoccupied; which together with the liberty that the inhabitants of the middle colonies will have (in consequence of the proposed boundary line with the Indians) of gradually extending themselves backwards, will more effectually and beneficially answer the object of encouraging population and consumption, than the erection of new governments;* such gradual extension might through the medium of a continued population, upon even the same extent of territory, preserve a communication of mutual commercial benefits between its extremest parts and Great Britain, impossible to exist in colonies separated by immense tracts of unpeopled desert.† As to the effect which it is supposed the colonies may have, to increase and promote the fur trade, and to prevent all contraband trade or intercourse be

* This gradual settlement Hillsborough opposed in 1772. See Report of Lords of Trade on the application of the Ohio Company. Vol. 10, North American Pamphlets.

† The colonists were inhibited by law from exporting sugar, cotton, rice, molasses, indigo, pitch, tar, turpentine, wool, ginger, masts, yards, bowsprits, beaver, peltry, hides, skins, whalefins, and other products of their industry, to any place but Great Britain, not even to Ireland. Foreign ships were excluded from colonial ports. Intercolonial trade in wool, or woollen goods was forbidden. An English sailor must not purchase woollen clothing beyond the value of two pounds in a colonial port. The printing of the Bible in English was prohibited. No American hat could be sent from one colony to another, nor could it be loaded on any horse, cart or carriage for conveyance. Slitting mills, steel furnaces, and plating forges to work with a tilt hammer, were prohibited. Bancroft, Vol. iv., chap. 12. Franklin's Letters to Shirley.

tween the Indians under your Majesty's protection, and the French or Spaniards; it does appear to us that the extension of the fur trade depends entirely upon the Indians being undisturbed in the possession of their hunting grounds; that all colonizing does in its nature, and must, in its consequences, operate to the prejudice of this branch of commerce, and that the French and Spaniards would be left in possession of a great part of what remained, as New Orleans would still continue the best and surest market.

"As to the protection which it is supposed these new colonies may be capable of affording to the old ones, it will, in our opinion, appear, on the slightest view of their situation, that so far from affording protection to the old colonies, they will stand most in need of it themselves.

"It cannot be denied, that new colonies would be of advantage in raising provisions, for the supply of such forts and garrisons as may be kept up in the neighbourhood of them, but as the degree of utility will be proportioned to the number and situation of these forts and garrisons which upon the result of the present enquiry it may be thought advisable to continue, so the force of the argument will depend upon that event.

"The present French inhabitants in the neighbourhood of the lakes will, in our humble opinion, be sufficient to furnish with provisions whatever posts may be necessary to be continued there; and as there are also French inhabitants settled in some parts of the country, lying upon the Mississippi between the Rivers Illinois and the Ohio, it is to be hoped that a sufficient number of these may be induced to fix their abode, where the same convenience and advantage may be derived from them. . . . *The settlements already existing as above described, which being formed under military establishments, and ever subject to military authority, do not, in our humble opinion, require any further superintendence than that of the military officers commanding at these posts.*"

No one can read over the various reports of the Lords of Trade

and Plantations to the Committee of the Privy Council, without being struck with the change that their policy underwent between 1748 and 1774. In 1748 they reported to his Majesty's Most Honourable Privy Council, "that the settlement of the country lying westward of the great mountains, as it was the centre of the British Dominions, would be for his Majesty's interest, and the advantage and security of Virginia and the neighbouring Colonies." They again reported to the Privy Council in favour of this grant to Hanbury, Lee and others, in which report they say that they had "fully set forth the great utility and advantage of extending our settlements beyond the great mountains (which report has been approved of by your Lordships). And as by these new proposals there is a great probability of having a much larger tract of the said country settled than under the former, we are of opinion that it will be greatly for his Majesty's service, and the welfare and security of Virginia, to comply with the prayer of the petition." But there was, in truth, some reason for this change. The difference was not so great between Lords Halifax and Hillsborough, as between the years 1748 and 1768. England at the one period was competing with France, for the possession of the Valley of the Ohio, and the South Shore of the St. Lawrence, and the Great Lakes. She felt that her claims would be strengthened by the actual occupation of the country; and she threw no obstacles in the way of the adventurous who courted danger, and the enterprising who sought wealth. Her colonists were her allies, on the sea coast, and beyond the western settlements, they fought with her, and for her, and victory crowned their united efforts. They won from France a territory far more extensive than that which was, before the war, in the possession of the colonists. When France had withdrawn from America, the colonists felt less dependent upon the mother country. Not a few public men in Great Britain declared that it would be for the interest of their country, to restore to France the Valley of the St. Lawrence; that their success had destroyed the balance of power

upon the North American Continent; that the colonists, no longer requiring their assistance, would soon weary of their authority.* Chatham, Shelburne, Camden and Conway, the public men who strove to prevent colonial taxation, one after another, ceased to be among the advisers of the Crown. The Colonial policy became less and less liberal, and the danger which was dreaded, was created by the policy which was pursued. Ministers undertook to hold the Valley of the Ohio, against the colonists, as France had held it twenty years before against both. No new colonies were to be formed. The climate of the unpeopled West was too favourable, the soil was too fertile, and the country was too far away. They would too soon cease to be hewers of wood and drawers of water to Great Britain. They would produce wealth for themselves beyond the reach of a parental hand.†

Lord Hillsborough not only opposed the establishment of new provinces north of the Ohio, but sought to prevent the colonization of the lands acquired from the Indians by the Treaty of Fort Stanwix; and because his colleagues were not willing to go quite so far, he resigned his seat in the Cabinet. With the exception of the policy or impolicy of settling this purchased district, the views of Hillsborough became the policy of the Government that introduced the Quebec Bill. The object of that Bill was declared by its promoters to be—to embrace all the French settlements in British America, in the new Province of Quebec; to protect the Indians; to make uniform regulations relating to the fur trade; to prevent colonization; and to give to the French population, in the territory ceded by France, the rights and privileges guaranteed to them by the Treaty of Paris.‡ The introduction of the Quebec Bill proved that the policy which had been pursued, since the conquest of Canada, in dealing with the French population, was

* See Spark's Franklin. Vol. 4

† See Lords of Trade Report 1772, on the Walpole Land Grant. N. American Pamphlets vol. 10. Library of Parliament.

‡ See the preamble and also the speeches of Thurlow and Wedderburn, in Appendix C. Also, Lords of Trade to Sir W. Johnson, N. Y. Hist. Doc., vol. 8.

about to be abandoned. The French had been accused, and not without reason, of having secretly encouraged the Indians under Pontiac to make war upon the English, and the instructions to Governor Murray, in 1763, show that the Province of Quebec was to be ruled by an iron hand.* The laws under which the inhabitants had been governed, before the conquest, were abrogated. A man who was ignorant of their language and their ancient laws and usages, was made their judge. They were allowed to hold no offices, civil or military. It was supposed they were incapacitated on account of their religion by the laws of England, which had been introduced in the gross. The magistrates and the militia officers appointed over them, were men who had come to the Province as suttlers to the troops, or traders among the Indians. It was said, in defence of the Quebec Bill, which removed the disabilities of the French, that the magistrates had rendered their powers useful to their business. The French debtor frequently found himself cited before a justice of the peace, for a small sum, and required to make instant payment, at a time when it was well known, that payment was impossible, or submit to incarceration until his creditor was satisfied; and if the debt exceeded two pounds, he could be dragged to Quebec from the most distant part of the Province.† “The history of the world,” wrote Lord Mansfield to Grenville, “don’t furnish an instance of so rash and unjust an act.”‡

When the Proclamation establishing Quebec and the Floridas was published, the English had not yet acquired possession of all the French military posts in the ceded territory; and it was not until two years later that St. Ange, the French commandant at Fort Chartres, surrendered the Illinois country to Captain Stirling, who went thither with one hundred

* American Archives, fourth Series, where the commission to Murray will be found.

† North American Pamphlets, vol. 12. Library of Parliament.

‡ For Lord C. J. Mansfield’s letter see appendix D. Letter to Grenville, Grenville papers, vol. 2., p. 476.

soldiers from Fort Pitt * to obtain possession. Major Loftus had essayed to go up the Mississippi in the spring of 1764, with four hundred men, to accept the surrender, but was prevented by an attack of a few Indians upon the banks of that river, and he returned again to Mobile. Captain Stirling, without delay, published a proclamation from General Gage, setting forth the rights guaranteed to the French inhabitants of Canada, by the Treaty of Paris. † Stirling remained but a short time, and was superseded by Major Farmer, of whose administration of the government little is known. The next person who held the office of Commandant in that country, was Colonel Reed, who made himself odious to the population, by acts of military oppression, occasioned by their ill concealed dislike to British authority. On the 5th of September, 1768, Lieutenant-Colonel Wilkins, who had been appointed by General Gage, to supersede Colonel Reed, arrived at Fort Chartres, and, in the following month, he issued a proclamation, by order of General Gage, establishing a court of justice in Illinois, for the purpose of settling all disputes and controversies between man and man, and all claims in relation to property, both real and personal. Courts were held at Fort Chartres once in each month. This system, though accepted as preferable to a military tribunal, did not satisfy the people. They demanded trial by jury; but this was refused, and it is said, the court became unpopular.‡ The government of all the Indian Territories was under the absolute control of the Commander-in-Chief of the King's forces in North America. It is not surprising that justice was sternly administered in these remote districts, and that commanders were guilty of gross abuses, where they could be neither restrained by law nor by public opinion. Lord Shelburne informed Dr. Franklin ,

* Albach says Stirling went from Detroit.

† See Appendix E.

‡ Albach's *Annals of the West*; Brown's *History of Illinois*; Monette's *History of the Mississippi valley*; Gayarre's *History of Louisiana*; Parkman's *Conspiracy of Pontiac*.

that Major Farmer had drawn £30,000, as extraordinary charges, on going to take possession of the Government of Illinois.* In April, "1769, we find Colonel Wilkins, of his Majesty's 18th Royal Regiment of Ireland, Governor and Commandant throughout the Illinois country," making extensive grants of lands to several of his friends in Illinois and elsewhere, "for the better settlement of the Colony, and the Governor agreed to be interested to the extent of one-sixth part thereof."† Wilkins was the last Governor of Illinois appointed by the Commander-in-Chief, at all events, the last of whom I have been able to find any account. After 1774, the Governor of the Illinois country was Lieutenant under the Governor of the new Province of Quebec.

In November, 1773, the year prior to the passage of the Quebec Act, the people of Illinois, failing to obtain from General Gage the reforms in their government which they desired, addressed themselves directly to Lord Dartmouth,‡ the Secretary of State for the Colonies. He pronounced their demand "very extravagant."

A plan of government was sketched out by the Ministry for the Colonies of the west. The people of Illinois protested against it. "Should a plan of government so evidently tyrannical be established," said Blouin, the agent of Illinois, to Lord Dartmouth, "it could be of no long duration." About the same time the French inhabitants of old Quebec were petitioning the king for a restoration of their ancient laws, the toleration of their religion, the removal of their civil and political disabilities, and the restoration of its ancient limits. The English inhabitants petitioned his Majesty for the maintenance of the English law, and the election of a General Assembly, "as there is a sufficient number of *Protestant* subjects residing in and possessed of real property in this Province,

* Franklin's letters to his son, October 11, 1767. See extracts in appendix B.

† See American State papers, vol. 2. Public Lands, page 180. This volume contains complete plans of the French settlements in Illinois.

‡ Dartmouth to Gage, 4 Nov. 1772; Gage to Dartmouth, 6 January, 1773; Dartmouth to Gage, 3 March, 1773; Daniel Blouin to Lord Dartmouth, 4 Nov. 1773.

and who are otherwise qualified to be members of a General Assembly." *

The people in every part of the territory conquered from France, were asking for a change in the systems of government, which had been established by the English.

At the conquest, the French population of Illinois was about three thousand.† At Vincennes, upon the Wabash, there was a colony of between four and five hundred.‡ Many from the villages along the east shore of the Mississippi, joined their countrymen on the other side, before they learned of the cession to Spain. || Those that remained remonstrated to General Gage against the corruption and favouritism of Wilkins. They asked for institutions like those of Connecticut, and declared that no irresponsible government could give satisfaction. "A regular constitutional government for them," said Gage to Hillsborough, "cannot be suggested. They don't deserve so much attention." "A regular government for that district," rejoined Hillsborough, "would be highly improper." Hillsborough suggested their removal to some place within the limits of any established colony.§ This, however, was impracticable; as any attempt to carry out such a policy would have led to their settlement beyond the Mississippi; and an expatriated population upon the frontier was to be dreaded. Towards the colony at Vincennes the Government could act upon this policy with less hesitation, as the inhabitants were farther

* See volume 12, North American Pamphlets, Library of Parliament, where both petitions will be found; and also the Masseres' Papers.

† Martin estimated the population of Louisiana, in 1763, at 13,538. Of whom 891 were in that part of Illinois, west of the Mississippi. East of the Mississippi, and before the French crossed the river to avoid British rule, the population of the several posts and villages was 3,000.

‡ 427. Gage's state of the settlement on the Wabash, 6 January, 1769.

|| St. Louis was founded by La Clade, 1764; D'Emigrant by Florissant in 1766; Portage des Sioux, eight miles above the Missouri river, in 1766; Les Petites Cotes (now St. Charles) by Blanchette in 1769; and Carondelet, six miles below St. Louis, by De Targette in 1767.

§ No impediment stood in the way of colonising Illinois after 1769. In that year an Illinois Indian assassinated Pontiac, and the Illinois Indians were in consequence exterminated by some of the northern Tribes.

away from the border. A proclamation was accordingly issued in April, 1772, commanding them to retire within the jurisdiction of some one of the colonies. But the people were unwilling to expatriate themselves from a country where they or their friends had resided for seventy years. Hillsborough resigned in August, and his successor, Lord Dartmouth, being a humane man, left them in quiet possession of their western homes.* As the breach between England and her old colonies widened, the ill-will harboured by English officials towards those who had encouraged Pontiac to begin his war, died away.

The petition from the French inhabitants of the old Province of Quebec asked, among other things, to have "restored to Canada the same limits which it had before, and to include the coasts of Labrador in the Province of Quebec, and those parts of the upper country which had been taken from it; since it cannot maintain itself without its usual commerce."†

By the Proclamation of 1763, the Province of Quebec was carved out of Canada, with the following boundaries: "Bounded on the Labrador coast by the River St. John, and from thence by a line drawn from the head of that river through the Lake St. John to the south side of the Lake Nippissim; from whence the said line crossing the River St. Lawrence and the Lake Champlain in 45 degrees of north latitude, passes

* "The King having become convinced that Hillsborough had weakened the respect of the Colonies for a royal government, was weary of him; his colleagues disliked him and conspired to drive him into retirement. The occasion was at hand. Franklin had negotiated with the Treasury for a grant to a company of about twenty-three millions of acres of land south of the Ohio and west of the Alleghanies. Hillsborough, from fear that men in the back-woods would be too independent, opposed the project. Franklin persuaded Hertford, a friend of the King's; Gower, the President of the Council; Camden, the Secretaries of the Treasury, and others, to become shareholders in his scheme. By their influence the Lords of Council disregarded the adverse report of the Board of Trade, and decided in favour of planting the new province. Hillsborough was too proud to brook this public insult.....His system remained behind him. When he was gone, Thurlow took care that the grant for the western province should never be sealed."—Bancroft, vol. 5, ch. 47. See also Spark's Life of Franklin, vol. 4.

†North American Pamphlets, vol., 12; also Masseres' Papers.

along the High Lands which divide the rivers that empty themselves into the said River St. Lawrence from those which fall into the sea ; and also along the north coast of the *Baye des Chaleurs*, and the coast of the Gulf of St. Lawrence to Cape Rosiers, and from thence crossing the mouth of the River St. Lawrence by the west end of the island of Anticosti, terminates at the River St. John." The remaining portion of the territory acquired from France, and not added to West Florida, nor to Georgia, was declared, by the same proclamation, " to be reserved for the present, under the King's sovereignty and protection, for the use of the Indians." The only provision made by the proclamation for the government of persons in the Indian country, is that contained in the concluding paragraph, which reads as follows :—" And we do further expressly enjoin and require all officers whatever, as well military as those employed in the management and direction of Indian affairs within the territories reserved as aforesaid for the use of the said Indians, to seize and apprehend all persons whatever who stand charged with treasons, murders and other violence or misdemeanors, *who shall fly from justice and take refuge in the said territory* ; and to send them under a proper guard to the colony where the crime was committed, where they shall stand accused in order to take their trial for the same." This was simply a provision for the extradition of the criminal to the province in which the crime had been committed, where the accused would be best known, and where the evidence by which he might be convicted or exculpated, would be most likely available. About the government of the few scattered colonists nothing is said. They had military governments provided for them by the Commander-in-Chief of the army in North America. This system was continued north of the Ohio river, until the country was united to the old Province of Quebec under the Act of 1774. The Quebec Bill was introduced by the Earl of Dartmouth, into the House of Lords, on the second of May of that year. It was declared that " a very large part of the territory of Canada

within which there were several colonies and settlements, subjects of France, who claimed to remain therein under the faith of the said treaty, *were left without any provision being made for the administration of civil government therein.**

Be it enacted that all the said territories, islands and countries, heretofore a part of the territory of Canada, in North America, extending southward to the banks of the River Ohio,† and westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay, and which said territories, islands, and countries are not within the limits of the other British Colonies, as allowed and confirmed by the Crown, or which have been, since the 10th of February, 1763, made a part and parcel of the Province of Newfoundland, be and they are hereby during his Majesty's pleasure, annexed to and made part and parcel of the Province of Quebec, as created and established by the said Royal Proclamation." ‡

When the Bill came down to the House of Commons, this clause was attacked by Burke, who was, at the time, agent for the Province of New York. The boundary between New York and Canada was unsettled. The western portion of the Province was still the property of the Six Nations, as recognized by the Treaty of Fort Stanwix; and it was not impossible that under this clause a boundary might be established which would take from that Province a large section of country, which its people and representatives held to

* These words were used by Shelburne in his letter to the Lords of Trade in favour of establishing new colonies.

† Had this section been enacted in this form, the construction which would make the word southward mean due south, would exclude from the New Province *all the territory outside of the old Province of Quebec, which lies East of a line drawn due north from Pittsburg.*

‡ It is important to observe in the changes which were subsequently made in this section that all the words after the word Mississippi, were retained as they here stand; and here they, beyond question, apply not to a *line* but to the country. It is the country southward to the banks of the River Ohio, westward to the banks of the Mississippi, &c.

be within its proper limits.* There was always less hesitation in altering the boundaries of a Crown Colony than of a proprietary one.† New York was a Crown Colony. It is true that it was twice granted by Royal Charter to the Duke of York; but when he ascended the throne, his rights, as proprietary Governor, were merged in his rights as Sovereign, and it remained a Colony of the Crown, until it ceased to be a British Province.

I have given elsewhere so much of the debate on the Quebec Bill, as relates to the proposed extension of the limits of the Province, that I need not here say anything more to show that there was, from the beginning to the close of the discussion upon the Bill, no evidence of the abandonment of the clearly expressed intention of the Ministry, and the law officers of the Crown, to embrace all the country between the Atlantic and the Mississippi, the Ohio and Hudson's Bay territories, in the new Province of Quebec.‡ Mr. Burke declared, that under the Bill, "the Crown has the power of carrying the greatest portion of the actually settled part of the Province of New York into Canada," that the boundary line might be fixed at the very gates of the City of New York, "and subject that colony to the liability of becoming a Province of France." Mr. Burke is careful to put his advocacy of the interests of New

* It is highly probable that what the Province of New York feared from an undetermined boundary on the side of Canada was, that the territory reserved to the Six Nations by the Treaty of Fort Stanwix would be included in Canada. The map will shew what New York would have lost.

† With regard to the grants heretofore made by the Governors of Canada adjacent to Lake Champlain, and by the Governor of New Hampshire to the west of Connecticut river, I do not conceive that the titles of the present claimants or possessors ought to have been discussed or determined upon any agreement or reason drawn from a consideration of what were or were not the ancient limits of the Colony of New York. Had the soil and jurisdiction within the Province of New York been vested in Proprietaries as in Maryland, Pennsylvania, Massachusetts Bay, or other Charter Governments, it would have been a different question; but when both the soil and jurisdiction are in the Crown, it is, I conceive, entirely in the breast of the Crown to limit the jurisdiction and dispose of the property in the soil in such a manner as shall be thought most fit. Earl of Dartmouth to Governor Tyson, March 3rd, 1773, New York Hist. Doc., vol. 8., page 356-7.

‡ See Appendix C.

York on grounds of public policy. He says: "It is not a line between New York and some other English settlements; it is not a question whether you shall receive English law and English government upon the side of New York, or whether you shall receive a more advantageous Government upon the side of Connecticut; or whether you are restrained upon the side of New Jersey. In all these you still find English customs, English juries, and English assemblies, wherever you go. But this is a line which is to separate a man from the right of an Englishman." He, therefore, insisted that the line should be clearly laid down in the Bill between the other Provinces and Canada, instead of leaving it to be afterwards determined by the King. The only objection made by Lord North to Mr. Burke's proposal, was the difficulty of the undertaking, and the danger of making a mistake "by doing at Westminster what could be better done upon the ground:" but he added that if any gentleman would find a "boundary of certainty, he would accept it." It will be seen, both from the discussions, and the amendments proposed, that there was no attempt to give to the Province less extensive limits than the Ministry proposed in the Bill as introduced. All that Mr. Burke attempted was to lay down a certain boundary between Canada and the other colonies. This necessitated a considerable change in the phraseology of this section, but none in the actual boundaries as first set forth; and whatever doubt may have arisen in consequence of the extraordinary construction put upon the Act in DeRienhard's case, has been owing to a want of careful attention to the fact, that there is but one line described—the *boundary upon the south*, and that the term "*northward*" is not descriptive of a line upon the west, but of "*all the territories, islands, and countries in North America,*" from the southern boundary so described to the "*territories of the Merchants Adventurers of England trading in Hudson's Bay.*"

It is true that Messrs Townshend, Dunning, Glynn, Barre, and Fox objected to the immense extent of territory which the

Bill would place under French Law and an arbitrary system of Government. They said that to speak of all the vast extent of country between the Great Lakes and the Mississippi river, south to the Ohio, "as heretofore part of the territory of Canada," was admitting, in the most solemn manner, after the conquest, what both the colonies and Great Britain had always denied before; that, in another war, Canada might be reconquered by France; and, it was asked, how could England in such an event, deny that Canada extended southward to the Ohio river? Lord North so far recognized the force of this argument, as to propose in place of the words "heretofore part of the territory of Canada," the words "extent of country." Mr. Burke expressed himself dissatisfied with the the few verbal changes offered by Lord North, and introduced an amendment, the object of which was to locate with precision the boundary between Canada upon the one side, and New York and Pennsylvania upon the other. I need not repeat his proposed amendments here; I have given them in an appendix, to this report, of extracts from the "Cavendish debates." They certainly are not well drawn, and had they been accepted they would not have given such a boundary as Mr. Burke described -- "one physically distinguished," "astronomically distinguished," "fixed by actual observation, and agreed upon by surveyors." To describe a boundary as running "across Lake Ontario, to the Niagara river, and from Niagara across Lake Erie, to the north-west point of Pennsylvania, and down the west boundary of that Province from a line drawn from thence until it strikes the Ohio," is not distinguishing it either physically or astronomically; and it was proposing an amendment which, to say the least, was in some degree, open to the same objection which Mr. Burke made to the clause of the Bill, as it originally stood. The Solicitor General (Wedderburn) said in reply to those who objected to the extension of the Province, that so far as the old English colonists were concerned, he thought "one great advantage of the extension of territory was that they will have little temptation to stretch them-

selves northward. I would not say, cross the Ohio, you will find the Utopia of some great 'and mighty empire,' I would say, 'this is the border beyond which, for the advantage of the whole empire, you shall not extend yourselves.' *It is a regular government, and that government will have authority to make enquiry into the views of native adventurers.* As to British subjects within the limits, I believe there are not five in the whole country.* *I think this limitation of the boundary will be a better mode than any restriction laid upon government. In the grant of lands, we ought to confine the inhabitants to keep them, according to the ancient policy of the country, along the line of the sea and the river."*† This was the policy long advocated by Lord Hillsborough, and which it was believed, by the promoters of this Bill, could be better accomplished by the adoption of a system of absolute government and of French jurisprudence, than by a proclamation prohibiting settlement within the territory, which, according to the political and commercial notions of the times, it was not for the interest of the mother land, should be colonized. Throughout the discussion there is not the faintest indication, either on the part of the Ministry or the majority of the House of Commons, of any intention to depart from that policy which Ministers aimed at when they proposed to embrace in the Province of Quebec the entire Indian territory, "south to the Ohio and west to the Mississippi." When the Province of Virginia remonstrated against the Act, she assumed that the new Province extended westward to the Mississippi;‡ and when the repeal of the Act was proposed the following year in the House of Lords, it was said that the Province of Quebec extended to the Mississippi river;§ and this, too, was

* This is a mistake. Some had purchased from the French in the Illinois country when they were removing beyond the Mississippi. See American State Papers, vol. 2, p. 113, Public Lands.

† This proved to be a well-founded opinion. No new grants were made after the passage of the Bill. See American State Papers, vol. 2, p. 180, Public Lands.

‡ Bancroft, vol. 6, ch. 15.

§ See Speech of Lord Shelburne in the House of Lords, 1775.

the view of the Government, and of the Law Officers of the Crown, who supported the Bill, as the first commission to Sir Guy Carleton, after the Act was passed, will show. I can discover no grounds for supposing that the western boundary was to be a line drawn due north from the junction of the Rivers Ohio and Mississippi. There is no word or phrase in the section defining the limits of the Province, to warrant such a construction. If this section of the Quebec Act was ambiguous, which I think is not the case, there were many reasons of public policy, existing at the time, which moved the Government and Parliament to propose this measure, that would have been, in part, defeated, had the law been so construed. I have assumed that, in the construction of this Act, you are not confined to the Act itself. It would be unreasonable to apply the arbitrary and technical rules laid down by courts in the construction of contracts, or even of public statutes regulating the private affairs of men, to a Statute like this. A law defining the boundaries of a country is as much a matter of state as a treaty. It should be dealt with as a state paper, and ought to be construed by rules applicable to treaties entered into by independent states for a similar purpose. The rules by which the true construction of the first section of the Quebec Act is to be ascertained, are those which would be followed, by the political departments of the Government, if Ontario and Canada were separate and independent states.* In the suit of

* Chalmer's Collection of Opinions, vol. 2, pp. 345-6. In the case of *Marryatt v. Wilson*. Upon the construction of a treaty between Great Britain and the United States, in error in the Exchequer Chamber, Chief-Justice Eyre, after observing that a treaty should be construed liberally, and consistent with the good faith which always distinguishes a great nation, said that courts of law, although not the expounders of a treaty, yet when it is brought under their consideration *incidentally*, they must say how the treaty is to be understood between the parties to the action, and in doing which they have but one rule by which to govern themselves. We are to construe this treaty as we would construe any other instrument, public or private: we are to collect from the nature of the subject, from the words and the context, the true intent and meaning of the contracting parties, whether they are A and B, or happen to be two independent states. (*Bos & Peel*, 436-9.) The authority of a decision can never be broader than the facts upon which it is based. This opinion must be taken as limited by the subject matter. The treaty was only *incidentally* in issue, and is then made part of the agree-

the Nabob of Carnatic against the East India Company (2 Ves. jr. 56,) the court said that "In case of mutual treaty between persons acting in that instance as states independent of each other—and the circumstance that the East India Company are mere subjects with relation to this country has nothing to do with that—the treaty was entered into with them, not as subjects, but as a neighbouring and independent state, and is the same as if it was a treaty between two sovereigns, and consequently is not a subject of private municipal jurisdiction. It is not mercantile but political in its nature."

The fact that Canada includes the Province of Ontario, cannot alter the rules of law appropriate in the case. Under our Federal system of Government, each has its appropriate sphere of separate and distinct political power, marked out for it by a supreme law, and is as far beyond the reach of the other, "as if the line of division was traced by landmarks and monuments visible to the eye." * And hence it is that questions of difference as to boundary, or other disputes between two provinces, or between Canada and a province, for the settlement of which no provision is made by the constitution, can only be properly dealt with according to the usages of independent nations for an amicable settlement of such disputes.

"The evidence," says Chief Justice Taney, "by which a boundary between states must be decided in this court, (U.S. Supreme Court) depends upon the law and usages of nations in disputes of this kind." † In England the courts have re-

ment or contract between the parties whose rights are being litigated. In that event, the contract is not raised to the dignity of a state paper, but the treaty, for the purpose of the suit, is merged into the pact between the parties, and has the same character as any other part of the instrument between the same persons. It is only in this way that the opinion of Chief Justice Eyre can be reconciled with international law. The court in this case can hardly be supposed as laying down broadly a general rule, which would, in effect, conflict with a well-settled principle in constitutional law, that where a construction has been given to a treaty by the political department of the government, it is the duty of the courts to follow it.

* Ch. J. Taney in *Ableman v. Booth*, 21 Howard 516.

† *State of Pennsylvania v. the Wheeling and Belmont Bridge Company*, 13 Howard, B. 518.

ceived evidence to ascertain the boundaries of parishes which they have held inadmissible for the purpose of proving the limits of private estates. * It is certain that those upon whom has devolved the task of determining the construction of treaties, have not failed to avail themselves of all the light that the history of the circumstances which led up to the treaty may throw upon any obscure or ambiguous expression it contains. They have not hesitated to go outside of the treaty for the purpose of ascertaining its meaning. †

And in the construction of a public statute, relating to the good government of any portion of the empire, the same latitude has been claimed. In 1851, when Earl Grey was Colonial Secretary, doubts having been expressed by the Governor of Antigua as to the proper construction of "An Act to Provide for the prosecution and trial in her Majesty's Colonies of offences committed within the jurisdiction of the Admiralty," he commanded Mr. Merivale to obtain the opinion of the Law Officers of the Crown; and Mr. Merivale, in doing so, stated that he was directed "*to subjoin a paper which was drawn up shortly before the passing of the Act, and explanatory of the reasons for its introduction,*" and this paper the Law Officers perused before they gave an opinion upon the scope of the statute they were asked to construe. They seem to have dealt with the paper as if it were a preamble to the statute.‡

Earl Grey would hardly have directed Mr. Merivale to have subjoined such a paper had it not been the practice to seek

* Reed v. Jackson 1 East, 355, 357; Doe v. Thomas, 14 East, 323; Outram v. Morewood, 5 Term R. 121, 123; Nichols v. Parker, and Clothier v. Chapman, note in 14 East R. 331; Morewood v. Wood, note in 14 East R. 327; Wells v. Sparke, 1 M & S., 688, 689; Dunraven v. Llewellyn 15, Q. B. 791; Daniel v. Wilkin, 12 Eng. L. and Eq. 547.

† See the correspondence between England and France as to the true construction of the Treaty of Utrecht, in relation to the limits of Acadia: between the United States and Spain as to the limits of Florida; also as to the western boundary of Louisiana; and between the United States and England as to the meaning of the Alabama Claims in the Washington Treaty.

‡ On the 15th February 1851, Earl Grey directed Mr. Merivale to obtain the opinion of the Queen's Advocate Sir J. DODSON, and the Attorney and Solicitor General Sir JOHN ROMILLY and Sir A. E. COCKBURN on the power of the Crown to issue commissions under 46 Geo. 3. c., 54 notwithstanding 12 and 13 Vict. c. 96; and on the 26th of that

such aid, for the purpose of ascertaining with greater certainty the precise object intended to be accomplished by the statute. And this paper contained not reasons set forth by Parliament, but by Ministers. It is assumed, considering the relations between Parliament and the responsible Ministers of the Crown,

month they sent to Earl Grey, the Secretary of State for the Colonies, the following answer :

MY LORD,—We were honoured with your Lordship's commands, signified in Mr. Merivale's letter of the 15th inst., in which he stated that he was directed by your Lordship to transmit to us the enclosed despatch from the Governor of Antigua. Mr. Merivale then stated that Anegada Reef, mentioned in this despatch, is off Anegada, one of the Virgin Islands, and a dependency of Tortola ; and that he was to request that we would favour your Lordship with our opinion on the following questions :—

Whether, since the passing of the Act “to provide for the prosecution and trial in Her Majesty's colonies of offences committed within the jurisdiction of the Admiralty (12 and 13 Vict. c. 96), it remains in Her Majesty's power to issue commissions to the colonies as was customarily done under the 46 Geo. 3, cap. 54, for trial of offences specified in that Act? and whether commissions before that Act are still in force?”

The parties charged with the offence referred to in the Governor's despatch, were so charged within Tortola, which is a colony, having courts of criminal justice within the meaning of the Act, but to which no commission has ever been issued under the 46th Geo. 3 c. 54 ; and our opinion was further requested, “whether it was competent for the authorities of Tortola to have transferred these parties for trial to any neighbouring colony to which such a commission has been issued by Her Majesty (if we considered such a commission to be still in force)?”

Mr. Merivale then stated that he was directed to subjoin a paper which was drawn up shortly before the passing of the Act, 12 and 13 Vict., explanatory of the reasons for its introduction. The provision mentioned at the end of that paper, for the transmission of these persons charged with these offences from one colony to another or to England was withdrawn in the course of the discussion on the Bill.

In obedience to your Lordship's commands we have perused the several documents transmitted to us, and we have the honour to report that the 12th and 13th Vic., c. 96, appears to be an enabling statute, not repealing any authority possessed by the Crown prior to it ; and we are therefore of opinion that, since the passing of that Act, it remains in Her Majesty's power to issue commissions, as was customarily done under the 46th Geo. 3. c. 54, for the trial of offences specified in this Act, and that commissions issued before that Act, are still in force. We think that if the persons mentioned in the despatch of the President of Tortola committed an offence which could be tried by the maritime courts of that island, such persons should now be tried by such court ; but if the Governor is convinced of the impossibility of obtaining an impartial trial in the colony, we think that it is competent for him to transfer such persons for trial to another colony where there is a commission in force.

J. DODSON,
JOHN ROMILLY,
A. E. COCKBURN.

The Right Hon. Earl Grey, &c., &c., &c.

E

that any formal statement of the policy of a proposed measure, relating to the government of any part of the empire, by Ministers, is, at least, *prima facie* evidence of the intention of Parliament, in the passage of the measure. And it can hardly be supposed, that a paper, which was of use to the Law Officers of the Crown, in arriving at a proper understanding of the law, would be inadmissible in a court to enable a judge to do the same thing.

Whatever rules, then, courts may have seen fit to adopt, not deduced from the "laws" of language, but established for reasons of public policy, in the exposition of private contracts, or in the construction of laws intended to regulate the private affairs of men, they have never been regarded as applicable to a law, international in its character, as a statute defining the boundaries of a country must be considered. Holding this opinion, I have deemed it not improper to state briefly the circumstances which ultimately led to the introduction of the Quebec Bill, and which serve to make obvious, the end aimed at by the Ministers and the Parliament that carried that measure.*

Two things are stated in the preamble of the Quebec Act,

* The Quebec Act has always been understood as extending that Province to the Mississippi. It was so understood in England by Ministers as is shown by Sir Guy Carleton's commission. It was so understood by the Opposition, as will be seen from the speeches on the proposed repeal of the measure; and it was so understood at the time by the colonists. Bancroft says "The fifth statute (which alarmed and offended the colonists) proposed to regulate the government of the Province of Quebec. The nation, which would not so much as legally recognize the existence of a Catholic in Ireland, for political considerations sanctioned on the St. Lawrence "the free exercise of the religion of the Church of Rome, and confirmed to the clergy of that Church their accustomed dues and rights." So far the Act was merciful; but it extended the boundaries of the government to the Ohio and the Mississippi and over the vast region which included, besides Canada, the area of the present States of Ohio, Michigan, Indiana, Illinois, and Wisconsin, it decreed arbitrary rule. The establishment of colonies on principles of liberty is "the peculiar glory of England," rendering her venerable throughout all time in the history of the world. The office of peopling a continent with free and happy commonwealths was renounced. The Quebec Bill which so quickly passed the House of Lords and was borne through the Commons by the zeal of the Ministry and the influence of the King, left the people who were to colonize the most fertile territory in the world without the writ of Habeas Corpus to protect the rights of persons and without a share of power in any branch of the government. Vol. 6, chap. 52.

which the authors of that law designed to accomplish—to embrace the several colonies and settlements of French, which were left without a civil government by the Proclamation of the 7th of October, 1763, and to annex to the Province of Quebec upon the east the sedentary fisheries of Canada, which, by that proclamation, had been united to Newfoundland, and subjected to regulations inconsistent with the nature of such fisheries.

The reason assigned in the preamble for the extension of the Province, carved out of Canada by the Proclamation of 1763, is, that “a very large extent of country within which there are several colonies and settlements of the subjects of France, who claimed to remain therein under the faith of the said treaty, was left without any provision being made for the administration of civil government therein,” and it will not be difficult to show that this object would not have been attained by making the western boundary of the Province, a line drawn due north from the junction of the Ohio and Mississippi rivers, as by far the greater number of the French settlers, west of the Province formed by the Proclamation of 1763, were along the east bank of the Mississippi, and they would have been excluded from the Province by a meridional boundary upon the west.

I have been unable to discover anything in the Act fixing any limit upon the west short of the Mississippi. There is but one boundary line mentioned—that upon the south. This line is described from the Bay of Chaleurs to the banks of the Mississippi. The first section of the Quebec Act declares that all the territories, islands and countries in North America, belonging to the Crown of Great Britain, “northward” from this southern boundary, to the southern boundary of the territory granted to the Hudson’s Bay Company, together with that part of Canada which has been made a part of the government of Newfoundland, shall be annexed to and made part and parcel of the Province of Quebec. There is no western limit named other than the banks of the Mississippi, which are re-

ferred to as the western terminus of the southern boundary. The Mississippi was the western limit of the British possessions in that quarter, and the southern boundary was carried forward to that river, in order to make a boundary, at once *natural* and *international*, the western limit of the new Province of Quebec. I apprehend that, if those who contend for a meridional boundary upon the west, were asked to assign some rational explanation for extending the southern boundary to the banks of the Mississippi and the borders of the Spanish possessions, at that one point, and not elsewhere, they would find some difficulty in doing so. It was not necessary to go beyond the junction of the Ohio and the Wabash unless for the purpose of embracing the settlers of the Illinois country, and these would have been as effectually excluded from the new Province of Quebec by a line drawn due north from the junction of the Ohio and the Mississippi, as they would have been by a line drawn due north from the junction of the Ohio and the Wabash. The object set forth in the Act, as the one Parliament intended to accomplish by its passage, was to embrace the several colonies and settlements that were left without a civil government by the Proclamation of 1763; and this would not have been done, if the Mississippi were not made the boundary upon the west. It has been said, that had it been intended to make the Mississippi the western boundary of the Province of Quebec, by this Act, the words "along the Mississippi" would have been inserted after the words "to the banks of the Mississippi, and northward." Those who hold this view, assume that the word "northward" is used to indicate the direction of the western limitary line. But the phraseology of the section forbids such a construction. There is but one boundary described—that upon the south, and it would be nonsense to write "bounded on the south by a line, and northward along the Mississippi to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay." The whole section is but one sentence, and

if we leave out the detailed description of the line by which the enlarged Province is bounded on the south, the manner, in which the framers of this section, intended to indicate its limits, will be more apparent. The section will then read—"that the territories, islands, and countries in North America, belonging to the Crown of Great Britain, bounded on the south by a line drawn from the Bay of Chaleurs . . . to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants Adventurers of England trading in Hudson's Bay, and also all such territories, islands and countries which have . . . been made part of the Government of Newfoundland be and they are hereby made part and parcel of the Province of Quebec." It is clear, when we take the primary parts of the sentence, that the word "*northward*" is used to indicate the extension, in that direction, of *all the country which is bounded on the south by the line described*. If the use of the words "bounded on the south," were not alone sufficient to preclude any other construction, the absence of any words of departure, such as *thence* or *along*, would be sufficient to show that the word "*northward*" is not intended to indicate the direction of a line drawn from "the banks of the Mississippi."

But if it were conceded that the word "*northward*" is used in the first section of the Quebec Act, for the purpose of locating the western boundary line, neither the usages of our language nor the principles of legal interpretation, would warrant the conclusion, that it makes the western boundary of Quebec a meridional line.

If "*northward*" or even *north* indicated an invariable direction, we never would have had in our language such expressions as *directly north*, and *due north*. When we speak of a line running *westward*, we do not mean *due west*; such a line may diverge to the north or to the south of a *due west* line. All that we mean to affirm, is, that such a line is carried, as it is produced, farther away from the prime meridian, in a direction more nearly *west* than it is *north* or *south*. And so, too, when

we speak of a *northward* line, we mean a line proceeding from a more southern to a more northern latitude ; it is not necessarily a straight line ; nor a due north line ; it is a line, which, if sufficiently produced, must pass through every degree of latitude. Webster, upon the usage of Bacon and Dryden, defines *northward* as being towards a point nearer to the *north* than the *east* and the *west* points ; and this is undoubtedly the sense in which it is most commonly used. And it is because this is the sense in which this and similar words are used, that we may and often do designate by words derived from the cardinal points of the horizon, the different parts of a country, however irregular its boundaries.

The word *northward* is indefinite, and requires some qualifying word or circumstance to indicate, with precision, the direction intended. Did it mean *due north*, then the expression "*northward* along the Mississippi" would be a manifest solecism. But we find in the Act the expression "*westward* along the banks of the Ohio" which is a wider departure from a *due west* line, than *northward* along the Mississippi is from a *due north* line.

If the word *northward*, then, is admitted to indicate the direction of the western boundary line, whether that line is a straight or meandering one, whether it inclines to the east or to the west of a given meridian, must be determined by the manner in which it is employed, and by the intention of the law. We have in this section the words "*directly west*" applied to a line along the forty-fifth parallel. We have the word "*westward*" applied to a line along the bank of the Ohio. These words so used, give us the ideas of the framers of this section as to their proper use ; and they indicate in a manner, in which there is no room for doubt, what form of expression would have been employed had they undertaken to make a meridional line, the western boundary of the Province.*

* In the treaties between Great Britain and the United States the words *due west* are used in those of 1783, 1818 and 1842, to indicate a line produced directly *at Westward* is used in the treaty of 1846, in the sense of *due west*, and this is the only

The southern limitary line is carried forward to the *banks* of the Mississippi, and if the ordinary meaning of *northward* was *directly north*, still the Mississippi river would be held to be the boundary, as it is a well settled rule that both course and distance yield to natural and ascertained objects.*

And when a natural boundary is once reached it is to be followed, unless it can be clearly shown that a departure was intended.

The Proclamation of 1763, by which the old Province of Quebec is described, sets forth the limits as follows :—

“The Government of Quebec, bounded on the Labrador coast by the River St. John, and from thence by a line drawn from the head of that river through the Lake St. John, to the south end of Lake Nipissim; from whence the said line, crossing the River St. Lawrence, and the Lake Champlain in forty-five degrees of north latitude, passes along the highlands which divide the rivers that empty themselves into the said River St. Lawrence from those which fall into the sea; and also along the *north* coast of the Baie des Chaleurs and the Gulf of St. Lawrence to Cape Rosiers, and from thence crossing the mouth of the River St. Lawrence by the west end of the Island of Anticosti, terminates at the aforesaid River St. John.”† This description continued to mark the limits of Quebec for eleven years. As the differences between the Government of Great Britain and the old Colonies increased, the feeling of hostility to the French, as I have already stated, died away. The attitude assumed by the scattered settlers in the territories of the west, in the war with Pontiac, was forgotten; and the Bill as introduced shows that the intention was to go to the Ohio on the south, and the Mississippi on the west; and although the phraseology was changed to give to New York

instance in which I have found it so used; but it has this precision given to it by the qualifying words “*along the 49th parallel of north latitude.*” In the commission given to Lord Dorchester *due west* is used to define the direction of the southern boundary, *west of Lake of the Woods*, and *northward* to define the direction of the western boundary.

* Preston v. Brewer, 6 Wheat, 580 : 5 Barn and Ad. 43.

† Appendix F.

a fixed boundary on the west, so that there could be no doubt as to its location ; no intention was disclosed, during the debates upon the Bill, or in the Bill as it ultimately passed, to give to the Province other boundaries than those named in the Bill as it came down from the House of Lords.

On the contrary, when we look carefully at the language of the Act, we see that it accurately describes the limits which the Bill, in its original form, shows that Ministers were resolved to establish. The entire section of the Act, describing the limits of the Province of Quebec, reads as follows :—

“1. That all the *territories, islands and countries* in North America, belonging to the Crown of Great Britain, *bounded on the south by a line* from the Bay of Chaleurs

(a) “Along the highlands, (which divide the rivers that empty themselves into the River St. Lawrence, from those which fall into the sea,) to a point in forty-five degrees of northern latitude, on the eastern bank of the River Connecticut ;

(b) “Keeping the same latitude *directly west* through the Lake Champlain, until, in the same latitude, it meets the River St. Lawrence ;

(c) “From thence up the *eastern* bank of the said river to the Lake Ontario ;

(d) “Thence through the Lake Ontario, and the river commonly called the Niagara ;

(e) “And thence along by the eastern and south-eastern *bank* of Lake Erie following the said *bank* until the same shall be intersected by the northern boundary, granted by the charter of the Province of Pennsylvania, in case the same shall be so intersected ;

(f) “And from thence along the northern and western boundaries of the said Province, until the said western boundary strikes the Ohio ;

(e. 2.) “But in case the said bank of the said lake shall not be found to be so intersected, then following the said *bank*

until it shall arrive at that point of the said *bank* which shall be nearest the north-western angle of the said Province ;

(f. 2) " And thence along the western boundary of the said Province, until it strike the river Ohio ;

(g.) " And along the *bank* of the said river *westward* to the *banks* of the Mississippi ;

" And *northward* to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay ; and also all such territories, islands and countries, which have, since the tenth of February,* one thousand, seven hundred and sixty-three, been made part of the government of Newfoundland, be and they are hereby, *during His Majesty's pleasure*, annexed to, and made part and parcel of the Province of Quebec, as created and established by the said Royal Proclamation of the seventh of October, one thousand, seven hundred and sixty-three." It will be observed that the southern boundary extends along the *bank* of the St. Lawrence, the *bank* of Lake Erie, and the *bank* of the Ohio river, and to the *banks* of the Mississippi.

Now there must have been some reason for using the plural form of the word in this one instance, and when we look into the definitive Treaty of Paris, the intention, I think, becomes obvious. By that Treaty the middle of the Mississippi was made the boundary between the English and the French possessions, but the navigation of the whole river from bank to bank was free to the subjects of both Crowns ; each had, for purposes of navigation and commerce, an easement in the waters of the other's half of the river, and a servitude upon its own. The Government of each nation could regulate the navigation of the river so far as its own subjects were concerned, as absolutely as if the river had been wholly within its own territory. Had the framers of the Bill proposed to exclude the Mississippi as they did the Ohio, they would have used the same form of expression, and said " to the *bank* of the Mississippi." Had it

* This date is obviously a mistake. It is the date of the Treaty of Paris, by which the country was ceded to Great Britain.

been proposed to do nothing more than to make the middle of the Mississippi the western boundary, the southern boundary would have been extended "along the bank of the Ohio to the Mississippi, and thence to the middle of the said river;" but the authors of the Act used another form of expression, and they evidently used it for the purpose of placing the navigation of the river, so far as British subjects were concerned, under the Government of Quebec. The English Government were resolved to prevent, if possible, the colonization of the country. They had been forced to abandon the policy of expatriating the French. They did not look for French emigration, and they hoped to prevent a further increase of the mischief, or what they regarded as such, by preventing the colonists from the east of the Alleghanies settling north of the Ohio. They felt that two things were necessary to give them success—the extension of French law over the entire country, and the exclusion of the old colonists from the fur trade of the north-west. It was said that the western trade was, contrary to law, carried on with New Orleans. This the English Ministry were ready to permit, as a lesser evil than colonization. They did not feel sure that settlement could be prevented, unless the English colonists were excluded from the navigation of the Mississippi. They well knew that an Imperial statute would be as impotent for this purpose, as the King's Proclamation had been against the settlement of the valley of the Ohio. They knew that the French colonists of the Illinois country, wished to retain to themselves the fur trade of the upper Mississippi. They had, not long before, shown a desire to have the Indian war renewed, to prevent the other colonists from engaging in it; and no other people would have the same interest in enforcing any measure necessary to this end. As no colonial law has any extra-territorial force, had the Quebec Act done nothing more than extend the boundary of the Province to the centre of the Mississippi river, the Government of Quebec could have had no effective control over the navigation of the river, as the easement secured to British subjects

in the whole river, would have been beyond its reach in the western half. What the Act clearly points to is an intention not only to extend the limitary line on the west to the international boundary, but also to embrace within the jurisdiction of the Government of Quebec the navigation of the Mississippi river. This view of Imperial policy, is confirmed by the correspondence which passed between the Colonial Office and various officials in America.* If this policy was never carried out, it was because the Imperial authorities at last saw that war with their colonies was imminent, and they were not disposed to widen the breach by giving further cause for offence.

The same Government that carried the Quebec Act through Parliament, advised the King to commission Sir Guy Carleton in the following year. Thurlow and Wedderburn were still the law officers of the Crown; and it was evident from the boundaries laid down in the Governor's commission, that they understood the Quebec Act as extending the Province to the Mississippi river.

The boundaries of the Province, as set forth in the commission to Sir Guy Carleton in 1775, were the following:

"Our Province of Quebec in America, comprehending all our territories, islands, and countries in North America, bounded by a line from the Bay of Chaleurs along the highlands which divide the rivers that empty themselves into the River St. Lawrence from those which fall into the sea, to a point in forty-five degrees of Northern Latitude on the eastern bank of the River Connecticut; keeping the same latitude directly west through the Lake Champlain, until in the same latitude it meets with the River St. Lawrence; from thence up the eastern bank of the said river to the Lake Ontario; thence through the Lake Ontario and the river commonly called Niagara; and thence along by the eastern and south-eastern bank of Lake Erie, following the said bank until the same shall be intersected by the north-

* Numerous letters of Hillsborough, Dartmouth, Wright, Gage, and others.

ern boundary granted by the charter of the Province of Pennsylvania, in case the same shall be so intersected, and from thence along the said northern and western boundaries of the said Province until the said western boundary strikes the Ohio; but in case the said bank of the said lake shall not be found to be so intersected, then following the said bank until it shall arrive at the point of the said bank which shall be nearest to the north-western angle of the Province of Pennsylvania; and thence by a right line to the said north-western angle of the said Province; and thence along the western boundary of the said Province until it strikes the River Ohio, and along the bank of the said river westward to the banks of the Mississippi, *and northward along the eastern bank of the said river* to the southern boundary of the territory granted to the Merchants Adventurers of England trading to Hudson's Bay; and also all such territory, islands, and countries which have, since the tenth of February, 1763, been made part of the Government of Newfoundland as aforesaid."

In this commission the word *south*, which is found in the Act, is omitted; so that, the boundary of the country, which Sir Guy Carleton had authority to govern, could be specifically laid down upon the west as well as upon the south, and this we see was done with but little departure from the words of the statute.

I have already stated that the Act would not accomplish the object set forth in the preamble—of making provision for the administration of civil government in the several colonies and settlements of French who were not included in the Province of Quebec, established by the Royal Proclamation of October, 1763, unless the Mississippi was made the western boundary. There were at least five, and according to the French view six, settlements of French on the east side of the Mississippi, in what was called the Illinois country, which, though not included in the capitulation at Montreal, were ceded by the definitive Treaty of Paris to Great Britain. These were

Cahokia, at the mouth of a creek of the same name, about three miles from the site of St. Louis; St. Philip, forty-five miles below Cahokia on the Mississippi; Fort Chartres, about seven miles below St. Philip; Prairie du Rocher, near Fort Chartres; Kaskaskias, on a river of the same name, six miles from its mouth and fifteen miles south-east of Fort Chartres; and Vincennes upon the Wabash. According to the representations made by Mr. Pitt to M. Bussy, Vincennes was included in the country surrendered by the Marquis of Vaudreuil to General Amherst. It is certain, however, that in was under the government of the French commandant of the Illinois country, and regarded by the French as being within that section of the Province of Louisiana, which, before the conquest, was made subordinate to and dependent upon Canada. All these places, except Vincennes, are west of a line drawn due north from the junction of the Ohio and Mississippi rivers, and they formed a majority of the people who were, by the Act, declared to have been without any civil government—a benefit which the preamble of the Act declares it was designed to confer upon them by annexing them to the old Province of Quebec.

The English Ministry were in possession of information as to the population of the principal French settlements. Captain Pitman, a military engineer, was sent by the British Government to survey the forts, munitions of war, and towns in Florida, when the British took possession of that country. Having surveyed the fortifications of Pensacola and Mobile, he proceeded to survey the posts on the lower Mississippi, and reached Illinois in 1766. He published, in London, in 1770, a quarto volume, entitled, "The Present State of the European Settlements on the Mississippi." He describes the Illinois country as the territory which is bounded on the north by Illinois river, on the south by the Ohio, on the west by the Mississippi, and on the east by the Wabash and Miamis. He describes the soil, climate, Indian tribes, and the French settlements; and also the agricultural and commercial pursuits of the

people. He gives the population of the villages along the Mississippi as follows: Fort Chartres forty families; Kaskaskias sixty-five families, besides merchants and slaves, and a small garrison of twenty-one soldiers; Prairie du Rocher twelve families; St. Philip sixteen families, and Cahokia forty-five families.*

After the English went into possession of the Illinois country, many of the French abandoned their residences, and removed to the west side of the Mississippi. When the census was taken in 1768, it is probable that more than half the population had left. The population of Fort Chartres had diminished from 300 in 1764, to 15 in 1768, and St. Philip from 150 to the same number. The census then taken shows the number of inhabitants in the settlements of the west to have been as follows:

Kaskaskias	903
Cahokia	300
St. Philip.....	15
Prairie du Rocher.....	125
Fort Chartres.....	15
<hr/>	
Total upon the Mississippi*.....	1358
Vincennes upon the Wabash*.....	427
Oiatenon upon the Wabash	126
St. Joseph's, S E. of Lake Michigan.....	90
Detroit †.....	572

There were a few settlers at Michilimackinac, and a larger number in the north-west, beyond Lake Superior, but their numbers were not known. These statistics show that the most populous of the French colonies west of the old Province of Quebec was that in Illinois, upon the east bank of the Mississippi river, whose people had petitioned for the establishment of a civil government, whose last Governor, Rochblave, was Lieutenant-Governor under Sir Guy Carleton, and was made by him subordinate to Lieutenant-Governor Hamil-

* See Appendix G.

† See Appendices G. and H.; also Rogers' *Acct. N. A.* p. 168; Mante's *History of the War*, p. 525; Craig's *Olden Time*, 414; Gen. Gage to Hillsborough, 15th May, 1768, and 6th January, 1769.

ton, of Detroit. They all dwelt west of a line drawn due north from the junction of the Ohio and Mississippi rivers.*

It has been suggested that the western boundary under the Act of 1774, was neither the Mississippi nor a due-north line, but the line marked upon a map which General Amherst said he had received from the Marquis of Vaudreuil, and which was in the possession of Mr. Hans Stanley, when at Paris, in 1761. Mr. Pitt in a letter to M. Bussy thus describes the western liminary line of the country surrendered by the capitulation of Montreal: "Canada, according to the line of its limits, as traced by the Marquis de Vaudreuil himself, when that Governor surrendered the said Province by capitulation to the British General, Sir J. Amherst, comprehends on the one side the Lakes Huron, Michigan and Superior; and the said line drawn to the Red Lake takes in, by a serpentine progress, the River Ouabache (Wabash) as far as its junction with the Ohio, and thence extends itself along the latter river as far, inclusively, as its influx into the Mississippi."†

It is only necessary to observe, that, had it been intended to make any such line the western boundary, there would have been no propriety in extending the southern liminary line further westward than the mouth of the Wabash.

That part of the line referred to by Mr. Pitt, from the Wabash to the Mississippi, could have been drawn but for one purpose—to surrender to the English the valley of the Ohio upon the south side of that river. According to the represen-

* See Hutchin's Map.

† Mr. Pitt to M. Bussy, 17th August, 1701. See Appendix I.

NOTE.—This passage is obscure, but I have understood it as best suits the object aimed at by Pitt—the surrender of the valley of the Ohio. If the line is understood as including the Wabash, &c., on its course to Red Lake, then it must extend northward along the Mississippi; but this would be excluding the valley of the Ohio from the surrender, which Mr. Pitt was most anxious to secure, as it was the contested possession of this valley which gave rise to the war. The use of the word "inclusively" by Mr. Pitt, shows that the Ohio, from the mouth of the Wabash, was included in the surrender by a boundary along its northern bank. The country west of the Wabash was not, therefore, included in the surrender to General Amherst. There is no reason to believe this line was thought of by the framers of the Quebec Act. The treaty gave England a better boundary than she had by Vaudreuil's capitulation.

tations of Mr. Pitt the whole valley of the Ohio on both sides of the river, as far as the Wabash, and the southern half of the valley, from the Wabash to the Mississippi, was surrendered to General Amherst. Had it been intended to make this line the western boundary, the southern boundary would not have been extended beyond the Wabash, for by producing the southern boundary to the Mississippi along the Ohio, if this line, referred to by Mr. Pitt, marked the western limit of the Province, the western boundary would return upon the southern as far as the Wabash river. It is unnecessary to say anything further to show that no such line was intended, as the western limit, by the authors of the Quebec Act.

From what I have so far stated, it will be seen that, before the seven years' war, the colonists were encouraged to settle west of the Alleghany mountains; that after the Treaty of Paris the prevailing policy was to prevent any settlement beyond the Ohio; and the intention of removing the French colonists who were settled upon the banks of the Wabash and the Mississippi, was seriously entertained, and was only abandoned by the retirement of Hillsborough from the Government; that the ostensible object of the Quebec Act, was to enlarge the boundaries of Quebec upon the west, by embracing those vast regions in which French colonists remained, and who had been left without any civil government; that to accomplish this object it became necessary to extend the western frontier to the Mississippi river; that the only boundary described in the Act, is the one upon the south, which is a line drawn from the sea to the frontier of the possessions of a foreign state; that a boundary at once natural and political being reached, it ought to be followed, unless a different intention is clearly expressed; that when a line on the south is drawn to a natural boundary, and it is stated that all the country to the northward is to be embraced within a state or province, it would be a forced construction which would depart from that natural boundary, because some parts of the territory which would be included by it, lie farther to the west than the most western limit of the south-

ern boundary; that when the Bill came down from the House of Lords to the House of Commons, the Mississippi was named as the limit upon the west; that the phraseology was changed, not to give to the Province more contracted limits, but to give the exact location of the southern boundary in the Act; that the colonists understood the Act as embracing the whole country from the ocean to the Mississippi; that Lord Shelburne and others who moved the repeal of the Act in the following year so understood it; and that the Ministers and Law Officers of the Crown so construed the Act is clear from the boundaries named in the commission of Sir Guy Carleton.

Spain, at the time the Quebec Act was passed, held all the country west of the Mississippi.* The old English colonies were on the brink of revolution, and, contrary to the preamble of the Bill, and contrary to the avowed declaration of its supporters, it is scarcely reasonable to suppose that the Parliament of Great Britain would deliberately leave a strip of territory seven hundred miles in length, and for a considerable distance not one hundred miles in width, without any civil government being provided, and that too upon the border of a country whose Government had been long hostile to Great Britain, and whose population were of the same nationality as our own subjugated colonists within this narrow territory.

By the second article of the Treaty of 1783, the south-western part of Quebec was ceded to the United States. The boundary in the north-west is defined as extending "through Lake Superior, northward of Isles Royal and Phillippeaux to Long Lake; thence through the middle of the said Long Lake, and the water communication between it and Lake of the Woods, to the said Lake of the Woods; thence through the said Lake to the most north-western point thereof; and from thence, on a *due western* course to the River Mississippi."†

* By a secret Treaty with Spain in 1762, but made public in 1764, France ceded to Spain all the country known as Louisiana. This transfer was promulgated in 1765, and Spain went into possession in 1769.

† See also Treaty of Ghent 1814, Convention of 1818, and the Ashburton Treaty 1842.

When a new commission came to be issued in which the boundaries of Quebec were laid down after this large section of territory was taken away, it was necessary to follow the new international boundary as far as it extended. If the western limit of Quebec under the Act of 1774, was a line *due north* from the junction of the Ohio and Mississippi rivers, the western limit of the Province would have begun where this meridian cuts the international boundary in Lake Superior, and the boundary of the Province upon the frontier would not have been carried westward beyond this point. On the other hand, if the Mississippi was held to be the western limit, it would be still necessary to go westward along the new southern boundary, until the line of the Mississippi was reached. On the 22nd of April, 1786, the King issued a commission to Sir Guy Carleton, "as Captain-General and Governor-in-Chief in and for the Province of Quebec, in America, comprehending all the territories, islands and countries in North America, bounded on the *south* by a line from the Bay of Chaleurs along the highlands which divide the rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean to the north-easternmost head of the Connecticut river; thence down along the middle of the river to the forty-fifth degree of north latitude. From thence by a line *due west* in the said latitude, until it strikes the River Iroquois at Cataragui; thence along the middle of the said river into Lake Ontario; through the middle of the said lake until it strikes a communication by water between that lake and Lake Erie; through the middle of the said lake, until it strikes the water communication between that lake and Lake Huron; thence along the middle of the said water communication into Lake Huron, thence through the middle of the said lake to the water communication between that lake and Lake Superior; thence through Lake Superior, northward of the Isles Royal and Phillippeaux to the Long Lake; thence through the middle of the said Long Lake and the water

communication between it and Lake of the Woods, and thence through the said Lake of the Woods to the most north-western point thereof; and from thence in a *due west course* to the river Mississippi, and *northward* to the southern boundary of the territory granted to the Merchant Adventurers of England trading to Hudson's Bay; and also all such territories, islands and countries which have since the 10th of April, 1763, been made part of the government of Newfoundland."*

Here we see the Mississippi was made the limitary line upon the west, and I know of no other reason for so regarding it than the one which I have already stated—that it was believed to have been made such by the Act of 1774. But were it possible to suppose otherwise, still the southern boundary of Quebec is extended by the King's commission to Sir Guy Carleton westward to the Mississippi river, and it can scarcely be doubted that if the King wished to enlarge the boundaries of the Province he had the power to do so. The old Province was established by proclamation based upon an Order in Council, and the limits of the Province as enlarged was to continue only during his Majesty's pleasure. It might have been argued, that according to a literal construction of these words, all the power reserved to the Crown in the matter was to retain the boundaries as they were set forth in the Act, or revert to those which were first established by the proclamation. It was not so, however, that the advisers of the Crown understood the law. The King first changed the boundaries by the Treaty of 1763; and on the 19th of April, 1791, the Province of Quebec was divided into Upper and Lower Canada, by an Order in Council. The Act of 1791 does not divide the Province of Quebec. It assumes that power to do this is vested in the Crown. It declares that the King has expressed his pleasure to make the division, and it is necessary to provide a government for each Province.†

* Chisholm Papers, MSS., p. 110.

† By the Treaty of Paris, 1763, the Island of Cape Breton was ceded by France to the King and Crown of Great Britain. By Proclamation issued by the King in October,

The Province of Quebec was divided into Upper and Lower Canada by an Order in Council passed on the 19th August, 1791,

1763, the Islands of Cape Breton and St. Johns were annexed to the Government of Nova Scotia, and the Proclamation authorized the Governor to call General Assemblies in the said governments, as soon as the circumstances of the colony would admit. In 1784 a separate government, by Royal Commission, was given to Cape Breton; and in 1820 the Crown, by a commission to the Governor of Nova Scotia, annexed Cape Breton to Nova Scotia. The inhabitants of Cape Breton petitioned the Crown, complaining of the illegality of the re-annexation by the act of the Crown alone, without their consent, or without an Act of the Imperial Parliament, as contrary to the Proclamation of 1763, and the Commission of 1784. Held by the Judicial Committee of the Privy Council that the union was legal, and that the petitioners were not entitled to a separate constitution under the Commission of 1784. *In re Cape Breton Island*, 1846, 5 *Moore's P. C. Reports*. "The King had no jurisdiction over boundary within the realm; without, he had in all his dominions as the absolute owner of the territory from whom all title and power must flow, (1 BL. Com. 241; Co Litt 1; Hobb. 322; 7 D. C. D. 76; Cowp, 204-11; 7 Co. 17 b.) as the supreme legislator—save a limited power in Parliament. He could make or unmake boundaries in any part of his dominions, except in proprietary provinces. He exercised this power by treaty, as in 1763, by limiting the colonies to the Mississippi, whose charters extended to the South Sea; by proclamation which was a supreme law, as in Florida and Georgia, (12 Wheat 524; 1 Laws of U. S. 443-51;) by Order in Council, as between Massachusetts and New Hampshire cited in the argument (1). But in all cases it was by his political power, which was competent to dismember royal, though it was not exercised on the chartered or proprietary provinces. (*McIntyre v. Johnston*, 8. Wheat 580.) In Council the King had no original power (1 Ves. Sr. 447). He decided on appeals from the colonial courts, settled boundaries in virtue of his prerogative where there was no agreement: but if there is disputed agreement, the King cannot decree on it; and therefore, the Council remit in to be determined in another place, on the footing of a contract (1 Ves. Sr. 347); *Baldwin, J. in Rhode Island v. Massachusetts*—12 Peters, S. C. Reports.

Before the Treaty of Paris, 1763, the territory claimed by England in North America extended southwardly to the 29th degree of north latitude as is evidenced by her charters to the Lords proprietors in 1677, (1665) and by the same instrument she interfered with the province of Louisiana by extending her southern line to the ocean. The country of Florida south of the 29th degree N. L., and west to the Mississippi was a conquest on the seventh of October, 1763, the King established the northern boundary of the Floridas at 31 degrees N. L., taking off a strip two degrees in width from the original colonies. This became a subject of dispute between the United States and Spain after the treaty of 1783. The original title of South Carolina, under the grant to the lord's proprietors, was unquestionable; and she contended that she had never been legally divested of the soil or sovereignty. Georgia founded her claim upon the commission to her governor, Wright, which comprised within its jurisdiction the territory in question, and the United States claimed it as a conquest from the British Province of West Florida. While Spain insisted that it was either a part of Louisiana or Florida, and as such was ceded to her by the Treaty of 1783. South Carolina, by the Treaty of Beaufort, relinquished her claim to Georgia, and the United

and in the commission to Lord Dorchester, formerly Sir Guy Carleton, bearing date the 12th of September following, the boundaries of Upper Canada (Ontario) are given as follow :—" It is to be separated from Lower Canada by a line to commence at a stone boundary on the north bank of Lake St. Francis, at the cove west of the point on Baudet; in the limit between the Township of Lancaster and the Seigneurie of New Longeuil, running alongside the limit in the direction of north, thirty-four degrees west to the westernmost angle of the said Seigneurie of New Longeuil; thence along the north-western boundary of the Seigneurie of Vaudreuil, running north, twenty-five degrees east, until it strikes the Ottawa river; and ascending the said river into the Lake Temiscaming; and from the head of the said lake, by a line drawn *due north* until it strikes the boundary line of Hudson's Bay. The Province of Upper Canada (Ontario) to comprehend all such lands, territories, and islands, lying to the westward of the said line of division as part of our said Province of Quebec." These acts of state prove conclusively that the eastern boundary of Ontario extends due north from Lake Temiscaming, to the boundary of Hudson's Bay, and that the western boundary, under this commission, is a line drawn *northward* from the head waters of the Mississippi; or, under the Order in Council, one still farther to the west. It is quite certain, that no part of the country north of the Missouri river was ever known as a part of the

States settled her claim by taking a cession from Georgia The Board of Trade of Great Britain in March, 1764, passed a resolution advising the King to extend the limits of West Florida up to the line drawn from the mouth of the Yazoo river east to Chatahouchee; it does not appear that the King ever made an order adopting this recommendation. No proclamation was issued in pursuance of it, but it appears that the commissions to the Governors of Florida designated that line as the northern limit of that Province. Notwithstanding which Governor Wright continued to preside over Georgia under his commission of 1763, which extended to the twenty ninth degree N. L. on the south. It is true that the power of the Crown was at that time absolute over the limits of the royal provinces, but there is no reason to believe that it ever had been exercised by any means less solemn and notorious than a proclamation.

Harcourt v. Galliard. 2 Wheat. 526-7.

(1) See 1 Chalmer's Annals, 480, 490; also, the History of the Boundary Disputes between New Hampshire and New York in 1764. 3 Belknap's Hist. N. H. 296.

Province of Louisiana before the surrender of Canada to Great Britain.* In the grant of Louisiana to Crozat in 1712, the Missouri and the Ohio were the northern boundaries of the Province, which, in the charter, was declared to be a dependency of Canada.† The boundary upon the east of the Mississippi, under the Western Company, to whom the country was transferred upon its surrender by Crozat in 1717, was extended northward to the River Illinois, and was held by the French to include the valley of the Ohio. The Western Company surrendered the country to the Crown of France in 1732.‡ In 1735, Bienville, a Canadian, assumed the government of the country on behalf of the Crown of France, but it was subject to Canada, and it was from Canada that the line of fortifications which were to protect the valley of the Ohio against English encroachments were constructed, and it was as a part of Canada that this valley was surrendered to General Amherst in the capitulation at Montreal.¶ After the Treaty of Paris the Mississippi became the eastern boundary of Louisiana, but the country to the north of that river was counted as a part of New France or Canada. It was from the Governor of Canada that the commanders upon the Red river of the north, and the Saskatchewan obtained their licenses to trade with the Indians in those distant regions. M. Duflot de Mo-

* Upon Franquelin's map of 1684 the boundary runs along the highlands, south of Lakes Erie and Michigan, and northward upon the watershed between Lake Michigan and the Mississippi river;—that is the whole valley of the Mississippi. This was immediately after La Salle's discoveries. Coronelli's map published in 1688 includes the whole in "Canada ou La Nouvelle France," of which "La Louisiane" forms a part, and this latter accords with the political arrangement at the time.

† See Appendix J.

‡ See Monette's History of the Valley of the Mississippi, vol. 1 : French's Hist. Col. The Oregon Question, by T. Falconer.

¶ The King will not desert his claim to the entire and total session of all Canada and its dependencies. *Pitt to M. Bussy, 17 August, 1761.*

As the Court of England has added to the first article of their answer to the entire and total cession of Canada as agreed between the two Courts the word *dependencies*, it is necessary to give a specific explanation of this word, that the cession might not in the end occasion difficulties between the two Courts with regard to the meaning of the word *dependencies*. *Choiseul, 9 Sep., 1761.* The reason is obvious, for otherwise it would include all Louisiana.

frás says: "If the boundaries between New France and the Hudson's Bay Company were not clearly defined even after the Treaty of Utrecht in 1713 and that of the cession of Canada in 1763, it is undeniable, that, either New France or the possessions of the Hudson's Bay Company extended as far as the Pacific ocean; and that if the Spaniards first explored the north-western coast of America, the French first discovered the interior of the continent proceeding from the east westwards. All the old maps, in this, in accord with the most reliable authors, only place the boundary of the French possessions in Canada at the southern sea. L'Escarbot, who wrote in 1617, among others, states as follows:—'Thus our New France has for its limits, on the western side the lands as far as the sea called the Pacific, on this side the tropic of Cancer; on the south the islands of the Atlantic sea, in the direction of Cuba and the island of Hispaniola; on the east the northern sea which bathes New France, and on the north that land called unknown towards the icy sea as far as the arctic pole.' *Lastly, in a map engraved in 1757, and attached to the memorials of the Commissioners of the Kings of France and England in America it may be observed that New France extended as far as the Pacific ocean, and it shows on the western coast of America, at the 46th degree, a large river running in a direction which corresponds exactly with that of the Rio Columbia. There is moreover nothing surprising in this specific description since from 1711 to 1754, the Captains General of New France sent out numerous expeditions to the western part of Canada, and after thirty years of uninterrupted explorations under the enlightened government of the Marquis de Beauharnois, an officer, M. de la Verendrye, acquired a thorough knowledge of the river and the western sea, which were no other than the Pacific Ocean and the Columbia.*"*

As early as 1641, Jogues and Raymbault preached to the Indians at the outlet of Lake Superior.† Shortly after this the

* Mofras 'Exploration de l'Oregon et des Californies.

† Bancroft, vol. 2, chap. 20.

Iroquois war began, and many of the Hurons and Ottawas fled to the western shore of that lake.

In 1654, two young fur traders joined a band of those Indians who were then at Quebec, and were absent for two years. They returned in 1656, accompanied by 250 Indians. They gave information in regard to the great lakes beyond Lake Huron. They described the Sioux of the west and the Knisteneaux of the north, and other tribes who dwelt in the region about them. The Indians asked to have their commerce with the French renewed, and missionaries sent amongst them.

In 1659 some fur traders went to Green Bay, and two of them passed the winter upon the shore of Lake Superior. They returned to Quebec the following summer with an escort of sixty canoes and 300 Indians.

Between 1660 and 1672 the whole country about Lake Superior was explored by Mesnard, Allouez, Dablon, Marquette, and Andre.

In 1671 the Hurons and Ottawas who dwelt at La Pointe near the western extremity of Superior, and whose emigration thither facilitated the explorations of the French, were suddenly attacked by the Sioux, and returned to their ancient country.*

The Illinois tribes, who had at one time dwelt near Lake Michigan, but who had been driven by the Iroquois beyond the Mississippi, were yearly visitors at La Pointe, informed Marquette and others of the existence of the Mississippi and the intervening country.† Daniel Greysolon du Lhut, in 1678, explored the country between Lake Superior and the Mississippi. He had been two years in those regions when met by Hennepin. He sought to establish relations of friendship between the Sioux and the Assiniboines. In the summer of 1679, he visited three towns of the Sioux, and planted in their country the arms of the French King.‡ He, with the four Frenchmen who

* Parkman's *Discovery of the Great West*, p. 31.

† Dalben. *Relation*, 1671.

‡ *Du Lhut to M. Frontenac*. He left Quebec on the 1st of September, 1678, for the purpose of discovering the Nadessioux (Sioux) and Assinipoulaks (Assiniboins). On

were with him, accompanied Hennepin down the Mississippi to the Wisconsin, and thence to Green Bay. He built a trading post near Thunder Bay on the north-west shore of Lake Superior, called Camanistigoyan. The Intendant, Duchesneau, denounced him as a leader of the *coureurs des bois*, of whom the missionaries complained, and who were trading with the Indians without licenses. In all this he acted in a *public capacity*, and under the authority of the Governor of Canada.* The French, about this time, established forts at the river Nipigon and other places upon Lake Superior;† and it would seem that a trading post was erected north or north-west of Lake Nipigon.‡§ In 1716, Messrs. Vaudreuil and Began addressed the French Government in favor of extending the explorations westward to the Pacific ocean. The Government of France, the following year, approved of the plan. M. de Vaudreuil was instructed to establish three posts without any expense

the 2nd July, 1679, he caused his Majesty's arms to be planted in the great village of the Nadessioux called Kathio, where no Frenchman had ever been, nor at Sougaskious and Honetbatons, 120 leagues distant from the former, where he also set up the King's arms in 1679. On the 15th of September he gave to the Assenipoulaks and other northern nations a rendezvous at the head of Lake Superior, with a view to get them to make peace with the Nadessioux. They all were there and he united them together. N. Y. Hist. Doc., vol. 9, p. 795.

* Parkeman's Discoveries of the Great West, pp. 251-9.

† See M. de Beauharnois to Count de Maurepas, 8th Oct., 1744. See Appendix M.

‡ Du Lhut's brother who has recently arrived from the rivers above the Lake of the Allenenipigons assures me that he saw more than 1500 persons come to trade with him. They were very sorry that he had not sufficient goods to satisfy them. They are of the tribes accustomed to resort to the English of Port Nelson or River Bourbon, where they say they did not go, through Sieur du Lhut's influence. It remains to be seen whether they speak the truth. The overland route to them is frightful, on account of its length and of the difficulty of finding food. He says there is a multitude of people beyond these, and that no trade is to be expected except by sea, for by the rivers the expense is too great. Denonville to Seignelay. August 1687.

§ The North-West Company had a fort (Ft. Duncan) at the north end of Lake Nipigon, described by Harmon in his journal. Employing the *Coureurs des bois*, formerly in the service of the French, they occupied the trading posts which had been established by the French. The old commanders had returned to the army, and the trade was for a few years suspended. This is evident from the statement made by the Indians to Carver. When the war was over the wood runners remained, but the commanders returned no more.

to the King; as it was thought that those who founded them would find a sufficient remuneration in the Indian trade. In July 1717, M. de Vaudreuil caused Sieur de la Noue, lieutenant, to set out with eight cannons to prosecute this scheme of discovery. He instructed Lieutenant de la Noue "to establish the first post at the River Kanastigoya," to the north of Lake Superior, after which he was to go to Takancamiononis near the Christianaux lake, to establish a second,* and to acquire through the Indians the information necessary for the establishment of the third at the Lake of the Assenipoles.† It is said that while this expedition will cost the King nothing, it is absolutely necessary that the King should bear the expense of those who continue to explore the country, after these posts have been established, as they will be obliged to give up all idea of trade. They estimate that fifty good *voyageurs* will be required; twenty-four to occupy the three posts, and twenty-six others to prosecute the exploration of the country from Lake Assenipoles to the western sea.‡

The next expedition of which I have been able to find any authentic account, is that of M. Verendrye. He formed a trading partnership with some Montreal merchants. They supplied goods, or funds wherewith to purchase such as were suited to the Indian trade. They also furnished the equipment for his journey. He set out for Lake Superior, accompanied by Père Messager, a missionary priest. He was authorized to take possession, in the King's name, of all countries he should discover; also to examine them attentively, in order to form an idea as to what facilities they might possess for establishing a route across those western regions, by which Canada and Louisiana might be connected with the South sea. To enable him to perform this important service no public aid was accorded to him, and, as a consequence, he found it necessary to linger about Michilimackinac and Lake

* Lake St. Joseph's, north of Nipigon, and at the head of Albany river.

† Lake Winnipeg.

‡ See Minute of Council. Appendix K.

Superior until 1733. In the year 1731 some of those in the employment of M. Verendrye, starting from Kaministigoya, a fort constructed by Lieutenant Robert de la Noue, passed on to Rainy lake, where they built Fort St. Peter. They then proceeded westward to Lake of the Woods, where they erected Fort St. Charles the following year. They subsequently followed the course of Winnipeg river, upon the north bank of which they constructed Fort Maurepas in 1734. "They took," says Garneau, "possession of the country for a two-fold purpose—to fulfil the obligation they owed to the King, and to establish fortified posts, useful to themselves, for the prosecution of their private traffic. They crossed Lake Dauphin and Swan Lake; they recognized the River *des Biches*, and ascended the Saskatchewan or Poscoyac to the forks. They raised Fort Dauphin at the head of Lake Manitoba, and Fort *de la Reine* at its foot. They also built Fort Bourbon on the Biches river, at the head of Lake Winnipeg;* and lastly they constructed Rouge Fort at the junction of the Assiniboine and Red rivers. Subsequently directed by Verendrye's brother and sons, they went westerly and northerly. In 1736 a son of Verendrye, Père Amnion, and twenty others were massacred by the Sioux upon an island in Lake of the Woods."† Four years later Verendrye reached the base of Rocky Mountains.‡

The fur trade was carried on by retired officers of the French army, called commanders, "who engaged in these distant expeditions, and had posts as far west as the banks of the Sas-

* Fort Bourbon was built by M. de Saint Pierre, a French Officer, and the first adventurer into these parts of the country. *Henry's Travels*, ch. 9, pt. 2nd. Lieut. St. Pierre was employed for many years about Lake Superior. See *Narrative of Occurrences* in 1746, 7, 8.

† The French had several settlements in and about Lake of the Woods. Sir A. Mackenzie, p. lvii.

‡ Journal of M. Verendrye. Garneau refers to two letters of M. Margry in the *Moniteur*, in September and November, 1857, as containing interesting accounts of M. Verendrye's discoveries and labours in the west; but they are not in the papers of the dates given. I suppose the dates have been misprinted, and I did not, in consequence, find them.

katchewan river, in 53° north latitude and longitude 102° west.”*

“It may be proper,” says McKenzie, “to observe that the French had two settlements upon the Saskatchewan long before and at the conquest of Canada; the first at the Pasquia, near Carrot river, and the other at Nipawi, where they had agricultural instruments and wheel carriages, marks of both being found about these establishments, where the soil is excellent.”† All the posts in the north-west were under the control of the Governor of Canada, and were recognized as being within its limits.

In the year 1746, when a number of French traders had been murdered by the Indians, Gallissoniere (the Governor) suggests the propriety of abandoning the northern and western posts, so as to compel the Indians “to come to Michilimackinac, and even to Montreal, in search of what they want.” He informs Lieutenant St. Pierre that he is at liberty to determine, according to circumstances, as to whether the different licenses to the northern posts shall be carried into execution or not. They were; and the only reason for not undertaking to coerce the Indians in the manner suggested was, that the trade of the north-west would pass into the hands of the English at Hudson’s Bay.‡

Between the period of the fall of Quebec, and the year 1766, the trade by the lakes and the St. Lawrence was greatly interrupted. Few, if any, of the old “commanders” remained. They were men of education, with strong national feeling, and, for the most part, officers of the army; and they withdrew, when New France became a British possession.||

Carver, who visited the country north of Lake Superior, in 1767, says that, on the waters which fall into Lake Winnipeg,

* History of the Fur Trade, pp. v. vi. Sir A. McKenzie, 1789-93.

† Ibid. p. lxxiii. Nipawi is in 104° west longitude, and seems to have been established by Captain de la Corne, some time prior to 1746. See Appendix L.

‡ See extracts from N. Y. Hist. Doc., appendix M.

|| See Sir W. Johnson’s Reports of Trade; also, extracts from Sir A. McKenzie’s History of the Fur Trade.

“the neighbouring nations take great numbers of excellent furs, some of these they carry to the factories and settlements belonging to Hudson’s Bay Company, situated above the entrance of the Bourbon river; but this they do with reluctance on several accounts; for some of the Assinipoils and Killistinoes, who usually traded with the Company’s servants, told me that, if they could be sure of a constant supply of goods from Michilimackinac, they would not trade anywhere else.”*

The Canadians who had lived long with the Indians continued to reside among them after the conquest. They had done so from the time of Du Lhut. They enjoyed the confidence of the tribes among whom they dwelt. There had always been many border men in the old colonies, who engaged in the Indian trade. In the year 1746 eight of them, led by a Canadian, succeeded in passing from the Ohio to north shore of Lake Superior.† They were, however, generally ignorant of the north-west; and they knew, after Canada became a dependency of England, by recent experience, that the former allies of the Indians had taught them to cherish feelings of hatred to Englishmen.‡ When, then, the English began to engage in the fur trade of the west, they employed the *coureurs des bois*, as their intermediate agents, in dealing with the Indians. The trade, by the way of the lakes, was rapidly resuscitated, and extended from the Missouri river to the Polar sea, and west to the Rocky Mountains.§ One of the

* See extracts from Carver’s Travels, Appendix L.

† See extracts from New York Hist., Doc., appendix M.

‡ Parkman’s war of Pontiac, and Paris documents in the N. Y. Hist., Doc.

§ “The northern Indians, by annually visiting their southern friends, the Athapascow Indians have contracted the small pox—which has carried off nine-tenths of them, particularly those people who compose the trade at Churchill Factory. The few survivors follow the example of their southern neighbours and trade with the Canadians, who are settled in the heart of the Athapascow country. I was informed by some northern Indians that the few who remain of the Copper Tribe have found their way to one of the Canadian houses in the Athapascow Indians’ country, where they get supplied with everything at less, or about half the price they were formerly obliged to give; so

English traders, Thomas Curry, in the autumn of 1766, accompanied by several guides and interpreters, went to Fort Bourbon, on the Saskatchewan, and returned after a most fortunate adventure, the following spring.*

Within a very short period of time, an animated competition prevailed among the fur traders, and occasional conflicts ensued which pointed to the necessity of union.†

In 1783, the North-West Company was formed at Montreal, with a capital which was divided into sixteen shares, but no portion of it was deposited. In the spring of the following year, two of the shareholders went to the Grand Portage, near the head of Lake Superior, for the purpose of seeing the principal traders, whom it was proposed to embrace in the company. The arrangements which had been made, were agreed to, and confirmed by all, except a Mr. Pond, who was not satisfied with the share allotted him. He and a Mr. Pangman, who seems to have been overlooked, came to Montreal to organize another company, intending, if successful, to return again to the north-west for the purpose of superintending the trade. Pond united with the first company. But Pangman, being joined by Gregory, McLeod and McKenzie, formed a separate organization. These rival companies soon came into conflict, and Sir A. McKenzie, says,—“After the murder of one of our partners and the laming of another, and the narrow escape of one of the clerks, who received a bullet through his powder horn in the execution of his duty, a union of the two Companies was effected in July, 1787.”‡ The X. Y. Company which had several forts, and for a time carried on an extensive trade in the north-west, united with the North-West

that the few surviving northern Indians, as well as the Hudson's Bay Company have now lost every shadow of any future trade from that quarter, unless the Company will establish a settlement within the Athapascow country and undersell the Canadians.”—*Hearne's Journal*, 1771.

* History of the Fur Trade—P. VIII. Sir A. McKenzie.

† McKenzie's History of the Fur Trade.

‡ History of the Fur Trade, p. LIII. Sir A. McK.

Company in 1803.* "The Hudson's Bay Company, who, in the year 1774, and not till then, thought proper to move from home to the east bank of Sturgeon lake, in latitude $53^{\circ} 56'$ north, and longitude $102^{\circ} 15'$ west, and became more jealous of their fellow subjects, and perhaps with more cause, than they had been of those of France. From this period to the present time, they have been following the Canadians to their different establishments, while, on the contrary, there is not a solitary instance that the Canadians have followed them; and there are many trading posts which they have not yet attained. This, however, will no longer be a mystery, when the nature and policy of the Hudson's Bay Company is compared with that which has been pursued by their rivals in the trade."† There seems to have been no misunderstandings or conflicts between the two Companies until after the arrival of Lord Selkirk.‡ The North-West Company extended their posts beyond the Rocky Mountains, and upwards of three hundred Canadians were employed in carrying on a traffic over the country between California and Russian America.§

At some seasons of the year not less than three thousand traders were assembled at Fort William, which had become the chief entrepôt of the North-West Fur Trade.

The Hudson's Bay Company did not enter the Valley of the Saskatchewan before the year 1780, nor the Valley of the Red river before 1805.|| They followed the North-West

* A *Journal* of fifteen years' residence among the Indians. Daniel Harmon.

This does not agree with the statement of Sir E. Ellice, before the Committee of the House of Commons, 1857. He says these Companies remained separate until both united with the H. B. Company. Question 5776.

It is probable he had partly forgotten the circumstances.

† *History of the Fur Trade*, p. ix. Sir A. McK.

‡ Harmon's *Journal*.

§ "Occurrences in North America," p. 125. This book was written by the Right Hon. Edward Ellice and Wm. McGillivray. See statement of Ellice before Committee of House of Commons, enquiring into affairs of H. B. Company, 1857. Question 5992.

|| McKenzie's *History of the Fur Trade*. Harmon's *Journal*. Testimony of Mc Donnell and Dawson before a Committee of the Legislative Assembly of Canada, 1857.

Company as they extended their posts to the north and west, and for a time the traders of the two companies remained on the most friendly terms. With the accession of Lord Selkirk to the head of the H. B. Company's affairs, a policy of violence and lawlessness was adopted.*

The period from 1811 to 1820 was one of conflict between the North-West and Hudson's Bay Companies. A grant was made of several thousand square miles to Lord Selkirk by the Hudson's Bay Company in the Red river district, six years after that company first entered that part of the country, and one hundred and forty years after they had obtained their charter.

Lord Selkirk, acting in the interests of the Hudson's Bay Company, at once set to work to expel the Canadian traders. Many of their posts and forts were taken, and some of them destroyed. Their supplies were seized. Forcible possession was taken of their letters and correspondence, and an attack was made upon a band of their traders, in which the people of the Hudson's Bay Company were defeated and upwards of twenty lives were sacrificed. Representations were made, by leading partners of the North-West Company, both to the Imperial and Canadian Governments, of the actual condition of affairs, in which the conduct of Lord Selkirk and his agents was denounced, and the pretensions to exclusive possession denied.† On the 12th of February, 1817, Earl Bathurst addressed a despatch to the Governor General, in which he said :—"You will also require, under similar penalties, the restitution of all forts, buildings, or trading stations, with the property which they contain, which may have been seized or taken possession of by either party, to the party who originally established or constructed the same, and who were possessed of them previous to the recent disputes between the two Companies."

* The various places where these companies had forts or other posts are named in Harmon's Journal.

† Occurrences in North America, 1817.

" You will also require the removal of any blockade, or impediment, by which any party may have attempted to prevent, or interrupt, the free passage of traders, or others of his Majesty's subjects, or the natives of the country, with their merchandise, furs, provisions, and other effects throughout the lakes, rivers, roads, and every other usual route or communication heretofore used for the purposes of the fur trade in the interior of North America; and the full and free permission for all persons to pursue their usual and accustomed trade, without hindrance or molestation."

Propositions were made by the North-West Company, before this time, for the union of the two companies, the Canadians receiving two-thirds and their rivals one-third of the profits, and that each should furnish in that proportion the means and capital, or to give the H. B. Company two-thirds of the trade over which they claimed their chartered rights extended, upon the condition that they refrained from encroaching upon the northern and western slopes of the continent. These offers for an arrangement were declined. The company, through Lord Selkirk, submitted a counter-proposition in which they stated "that they would not interfere with the Athabaska posts if the Canadians would give up all trade in the countries through which any waters passed, flowing towards the Hudson's Bay;" that in the event of the North-West Company acceding to this stipulation, they would be permitted to retain some of their own posts along the line to the Arthabascā country, if they would agree to leave the question of right to arbitration, which, if it decided in favour of the Hudson's Bay Company, then the North-West Company should pay an adequate rent to their rivals as landlords.* This counter-proposal the North-West Company declined to entertain. The Governor-General appointed a Mr. Coltman, in 1816, a commissioner, to enquire into and report upon the causes and extent of the disturbances in the North-West. Mr. Coltman made his report in which he recommended a union of

* Occurrences in North America 1817, p.p. 59, 60, 61.

the interests of the various fur-traders in that country. Both companies had lost largely. The stock of the Hudson's Bay Company fell, during the contest, from 230 to 50 per cent. "In this state of things," says the Right Hon. Ed. Ellice, "I think about 1819 or 1820, Lord Bathurst, then Secretary of State for the Colonies, sent for me to consult me whether it was possible to do anything towards promoting a union between the companies. I undertook that matter, not only at his request, but from obvious considerations of interest, having become under considerable engagements for one of the companies; and after a very difficult negotiation I succeeded in uniting the interests of the various parties and inducing them to agree to carry on the trade after that agreement under the charter of the Hudson's Bay Company. *At the same time, I suggested to Lord Bathurst to propose a Bill to Parliament which should enable the Crown to grant a license of exclusive trade (saving the rights of the Hudson's Bay Company over their territory) as well over the country to the east, as over that beyond the Rocky Mountains, and to extend to the Pacific ocean, so that any competition which was likely to be injurious to the peace of the country should be thereafter prevented. From these different arrangements sprung the present Hudson's Bay Company, which is more in fact a Canadian company than an English company. The Act then passed under which the company have since carried on the fur trade throughout the Indian territories beyond their boundaries exclusively by virtue of the license.*"*

An Act was then passed for regulating the fur trade; and a Royal license for the privilege of trading with the Indians to the exclusion of other parties was obtained. This license does not embrace the territories granted to the Hudson's Bay Company; and *while it secured to the new company a monopoly of the trade, it made it impossible for them to improve their title to the disputed territory by lapse of time.*

From 1811 until 1820 the Hudson's Bay Company claimed the North-West, as a part of their grant which had neverthe-

* Question 5784—answer to Committee on H. B. Co. The House of Commons.

less been in the possession of others for a period of 119 years. During the nine years of hostility between themselves and the Canadian company, their pretensions were energetically resisted; then came a union of the rival parties and the grant of an *exclusive license*. It can hardly be seriously argued that if their claim to the North-West was bad in 1811, "it would be opposed to the spirit of our law," to try the validity of that claim by principles which might then have been deemed applicable, since it must be admitted that this territory, in that event, was held by a license from the Crown; and the company, during the continuance of their license, could not, any more than other tenants set up an adverse claim which would be strengthened by lapse of time.*

From this brief historical sketch of the North-West country, it will be observed that it was explored by Du Lhut in 1671, and from that time down to the fall of Quebec in 1759, the French carried on an extensive trade with the Indians beyond Lake Superior;† that from 1717 until the country was ceded to Great Britain, it was under the authority of the Governors of Canada, and was recognized as a part of Canada by the French Government; that the trade from Montreal and Quebec which was frequently interrupted between 1759 and 1765, at the end of the Pontiac war, began again to revive and was carried on exclusively by traders from Canada until the beginning of this century; ‡ that the French half-breeds

* See copy of the License—Appendix O.

† McKenzie's History of the Fur Trade. Harmon's Journal. Evidence of the Hon. Wm. Gillivray. N. W. Trials at York, U. C., 1818.

‡ G. H. Pelly, Governor of H. B. Company, in a letter to the Lords of the Committee of the Privy Council for Trade, 7th February, 1838, says that "Up to this period (A. D. 1800) the Hudson's Bay Company had no great cause of complaint for interference with their inland trade, and if they had been left unmolested or been protected in the undisturbed possession of it, and of the rights and privileges vested in them by their charter, they would in all probability have continued in the enjoyment of the advantages they were deriving from their labours and exertions in those remote and little frequented wilds." That is up to the period that they became aware of the existence of the country and wasted their resources in seeking to expel the Canadian traders.

The H. B. Company paid their servants fixed salaries while the Canadian Company compensated theirs by a share of the dividend, and Mr. Harmon refers to the marked difference in the zeal of the two classes for the welfare of their employers.

in the North-West, (the descendants of the wood-runners and traders who intermarried with the Indians,) from the time of the conquest, looked upon themselves as the lawful proprietors of the country, and demanded compensation for permission to trade there.* It is difficult to understand how any valid claim to that country, can be based upon the charter granted to the Hudson's Bay Company. To say that the company's charter is valid, is beside the question. The charter, in one respect, must be regarded as a commission to make discoveries, and to take possession of unknown regions, on behalf of the English Crown.† It could not be held to convey a country seven hundred miles away from the nearest point visited by a company, that had never made any explorations in the territory, and that had in no way attempted to establish their authority over it. The grant of the territories named in the charter of the Hudson's Bay Company, was not a grant of lands in the actual possession of the Crown; it was a prospective conveyance of a country to be acquired by discovery and settlement, or occupation, and it can be conclusively shown, that the whole North-West country was in the actual possession of the French for nearly a century before it

* An impression is attempted to be made [by Lord Selkirk and his friends,] that these latter people, [the French half-breeds] are a race only known since the establishment of the North-West Company; but the fact is, that when the traders first penetrated into that country, after the conquest of Canada, they found it overrun by persons of this description. Some of whom were then chief leaders of the different tribes of Indians in the plains, and inherited the names of their fathers, who had been the principal French commandants, and traders of the district.

A gentleman who was formerly engaged in the Indian Trade, and who was lately in London, informed the author, that when he first visited the Red river in the year 1784, he was stopped near the Forks by some of these half-breeds, or Brulee Chiefs, who told him that he could only trade in that country by their permission; and as the price of such permission, they exacted from him goods, to the value of above £400. This gentleman found at the Upper Red river, Mr. Grant, the father of the half-breed Grant, mentioned in the Narrative, who had paid a similar tribute for permission to trade; so that it appears the right now claimed by the half-breeds, to the possession of the country, is at least no novelty. *Note p. 150, Occurrences in North America, 1817.*

† Many of the early charters were commissions to explore and take possession of countries to be discovered; and the rights of trade, &c., granted, were the reward. They gave the grantees an interest in promoting the interests of the Crown.

was ever visited by any one on behalf of the Hudson's Bay Company. The Sovereigns of England granted many charters in North America, conveying very extensive territories—some of them embracing the continent from the Atlantic ocean to the South sea, between certain parallels of latitude. Yet they were never regarded as furnishing a good ground for excluding the French from the banks of the Mississippi, or the Spaniards from the Western coast, between the same parallels. I am not aware that they have ever been referred to in any correspondence between those European nations, that claimed extensive possessions upon this continent, covered by such charters. Differences arose between England and Holland, and between England and France, as to the limits of their respective possessions in North America; but in no instance did any one of the governments commit the folly of referring to the charters which it had granted to its own subjects, for the purpose of establishing its superior claim to the territory in dispute.

It is true that the charter granted by Charles the Second to "The Merchant Adventurers of England trading in Hudson's Bay," does not profess to grant territory in the possession of another State, but *upon what principle of right, or of public law, can it be maintained, that he could convey all the territory in North America, not in the possession of any other Christian Prince?* What authority or power did he possess, that could make a charter of this kind from him, of any more value than like charters made by the Kings of France and Spain to their subjects? Such grants were made by the King of France; and the respective rights of the two governments were defended upon grounds of prior discovery, followed by occupation in some way, by treaties of cession from the natives, or by some other act which, according to the usages of nations, and the moral sense of mankind, creates a superior claim to the sovereignty of the country in dispute. Had Charles the Second granted to the Hudson's Bay Company all the lands along the shore of the bay, to the distance of a hundred miles inland, it

would not have made his claim to the sovereignty of the country lying beyond the grant any the less strong ; and can any one say upon what ground that claim can be based ? Whoever has taken the trouble to look into the policy of granting charters like this, must be aware that they were not usually given, because the king had the sovereignty of the country conveyed, but in order that it might become his by the subsequent acts of those to whom the grant was made.* There are in the history of English colonization many instances of prospective grants of this kind ; and the validity of the grant, as against any foreign prince or his subjects, depends upon the fact as to who was the first to perform those acts, which are held, by the law of nations, to constitute a title to the sovereignty of the country. The widest possible extent of territory was usually granted by the king, not because another sovereign could thereby be stopped from conveying, in like manner, a title equally valid to his subjects, but for the purpose of extending his dominions by stimulating certain of his people to make discovery, and take possession of unappropriated tracts of country, by his authority, and on his behalf. The French King did exercise his prerogative of making similar grants to his people, and while the English adventurers rested upon the shore of Hudson's Bay, and slept upon their prospective rights, the French boldly pressed forward and took possession of the interior, and held it for eighty years, when it was ceded to England by the Treaty of Paris. France had possession of the country to the Rocky Mountains at the time of the peace of Aix-la-Chapelle, but no complaint was made by the English that she had encroached upon British territory. The truth is, that the whole country drained by the Red and the Saskatch-

* As in the cases of the two Patents by Henry VII. to John Cabot. Biddle's Memoir of Sebastian Cabot, p. 75 ; Hakluyt, vol. 3, p. 30, 31 ; the Patent by Elizabeth to Sir Humphrey Gilbert, 1578 ; Hakluyt, vol. 3, 174-176 ; Charters to noblemen, &c., of London, and knights, &c., of the west, 1606 ; Hazard's Hist. Col. vol. 1 ; pp. 51-58 ; and many others of a prospective character. To assume that the lands granted were actually claimed by the Crown at the time is a mistake. It was by the act of the adventurers that the Crown expected to acquire a title.

ewan rivers, was to the British Government and people. an unknown land, and the maps of that country, published by British Geographers, were simply copied from the maps of the French.* Had the Hudson's Bay Company acquired the possession of the North-West country, by establishing forts and trading posts there, before the country was in the actual possession of the Canadians, they might have claimed it with some reason under their charter. They did not do so. There had been no act, formal or informal, of any Englishman, which gave to the Crown of England any basis upon which it could found a claim to the sovereignty of the North-West. The company rested upon the rights which a contested claim to the exclusive possession of the bay itself, gave; and while they did so, another people, against whom the rights conferred by their charter had no force, in fact, or in law, occupied the interior. No discoveries were made by the company until the time of Hearne, nine years after Canada became a Province of Great Britain.

Before concluding this part of my report, I would invite your attention to the maps published by British Geographers during the period which elapsed between the Quebec Act of 1774, and the treaty of peace with the United States in 1783, in all of which, the Mississippi river is marked as the western boundary of the Province, from its junction with the Ohio to its source.† Nor can I omit all allusion to the position uniformly taken by the Government of the Province of Canada upon the subject of the western boundary, as set forth in several public documents and acts of the executive. I have appended to this report the memorandum submitted to the House of Assembly in 1857, on the rights of Upper Canada to the North-West territory, by the then Commissioner of Crown Lands; the memorandum and papers submitted to a

* See statement of Jeffries' in his geography, p 19. See also a letter from C. Colden, Surveyor General, colony of New York, to Governor Clarke. New York. Col. Doc. vol. 4, p 177.

† See Governor Pownall's Map in Appendix of Maps.

Committee of the House of Commons, appointed to enquire into the affairs of the Hudson's Bay Company, in May, 1857, by Chief Justice Draper, the Commissioner of the Canadian Government, and to the treaty made with the Indians west of Fort William for the extinguishment of their title. I would also call your attention to the fact, that the Crown Lands Department laid out townships and granted lands west of the limits which it is now sought to assign to the Province of Ontario; that a part of the District of Algoma, which returns a representative from the Province of Ontario to the House of Commons, lies in the disputed territory; and that the present limits of that district were assigned to it by those who now maintain that it includes territory which forms no part of this Province.* I have also appended two official letters, addressed by Sir George Cartier and the Hon. William McDougal, to Sir F. Rogers, bearing date the 16th of January and the 8th of February, 1869, respectively.

From the facts which I have stated in the foregoing pages, it is clear that New France extended westward to the Rocky Mountains, if not to the Pacific ocean; that, of this territory, the Province of Quebec included all eastward of the Mississippi to its head waters, and from thence to the Hudson's Bay territories, it included all eastward of a line drawn from the source of the Mississippi sufficiently far to the westward to embrace all the French settlements and posts in the North-West, that is, to the forks of the Saskatchewan river; that by the Order in Council of 1791, all that part of Canada, to its utmost limits, west of the boundary between Upper and Lower Canada, is declared to be included in Upper Canada. This would extend the boundary on the west to the Rocky Mountains. It would carry the boundary of the Province westward beyond the limits of Quebec under the Act of 1774; and where that Order in Council placed the boundary, it, in my opinion, still remains. The commission to Lord Dorchester

* 'The decision of the Court in de Reinhard's case was not then so much regarded by the Premier of Canada as it is now.

extended his authority over so much of Upper Canada as was included in the Province of Quebec as altered by the treaty of 1783, and the limits of which are set forth in the commission of 1786. I have no doubt but that the Province of Manitoba has been formed within the legal limits of Ontario. It is to be regretted that no protest was made by the Government of Ontario at the time that Manitoba was being established.

It would have been to the advantage of this Province had her just claims to the North-West been asserted while the negotiations between the Imperial and Canadian Governments, for the transfer of Prince Rupert's land and the Indian territories, were pending. This was not done. I will not say that the rights of the Province to the territories west of Manitoba have been greatly prejudiced by the failure of a former Government to assert them. The difficulty of procuring an equitable arrangement has certainly been increased. The Province of Manitoba exists by the sanction of the Imperial Parliament. The British North America Act of 1871 recognizes and sanctions the establishment of that Province. The claims of Ontario to the country which is included within its boundaries, having regard to existing facts, can now be met only by adequate compensation.

REPORT ON THE BOUNDARIES OF THE PROVINCE OF ONTARIO.

Part II.

NORTHERN BOUNDARY OF ONTARIO.

The sovereignty of the territory, upon the shore of Hudson's Bay was a matter in dispute, between the Crowns of Great Britain and France, from the year 1670 until the signing of the Treaty of Utrecht, when the French claims to the possession of the coasts of the bay were definitely yielded to Great Britain. The location of the boundary line between Ontario and the Hudson's bay country, can be determined only by the facts of history and the recognized principles of public law.

Hudson Bay and Straits were discovered by Sebastian Cabot, who sailed thither under a commission from Henry VIII. of England, in 1517. He then entered the bay, which ninety-three years later took its name from Henry Hudson.*

It is stated in a paper prepared by the Hudson's Bay Company, for the purpose of establishing the right of the Crown of Great Britain to this bay at the time they obtained their charter, "that Sir Martin Frobisher, in Queen Elizabeth's time, made three voyages to the said bay, in 1576, 1577, and 1578, and gave English names to several places there; and that Captain Davis made also three voyages, and named other places in the bay." This statement is inaccurate. In the year 1576,

* Sir H. Gilbert, in Hackluyt, vol. 3, pp. 49, 50; Eden and Willis' History of Travels in the East and West Indies, fol. 223; Anderson's History of Commerce, ann. 1496. "In a map published by Ortelius," says the author of the Memoir of Cabot, "Hudson's Bay is laid down with singular precision. Ortelius was in possession of a map of the world by Sebastian Cabot."—Memoir of Cabot, p. 29.

Frobisher, who had long desired to start on a voyage for the discovery of a north-west passage to the east, regarding it, as he himself declared, as "the only thing of the world that was yet left undone by which a notable minde might be made famous and fortunate," was gratified through the favour of the Earl of Warwick. He sailed from the Thames in command of three small vessels of ten, twenty, and twenty-five tons burden, respectively. The smallest of the three sank in a storm. The mariners on the second, fearing a similar fate, returned. Frobisher sailed in the remaining sloop to the entrance of Hudson's Bay. He landed on an island near the strait which bears his name, and took formal possession of it for Elizabeth, and returned to England. A stone was brought back from this island which, it was said, contained gold. A fleet was at once fitted out. Elizabeth, who had done nothing more than express her good wishes at the first voyage, sent a large ship. This fleet which went in search for the northern Eldorado, did not advance westward as far as Frobisher had done in his little barque of twenty-five tons burden the year before. In his third voyage, a fleet of fifteen sail left upon the adventure, with one hundred persons as colonists. He reached the strait now called Hudson's. Frobisher thought that this strait led to the Pacific. As he was not seeking for geographical knowledge, but for the rich mines which were supposed to have been discovered upon his first voyage, he did not feel himself at liberty to sail further westward. He and his companions voyaged northward through dense fogs, amidst mountains of ice, again and again escaping destruction, they scarcely knew how; so that, by the time they had reached the point of destination, those who were to colonise the islands, between Hudson's Bay and Davis Straits, were most willing to return to England. The sailors were ready to mutiny. A cargo of the black ore was carried back. The avaricious were disappointed, and science gained nothing by the adventure. Frobisher, perhaps, would have found his way into the bay, had he not felt that his duty as a mercantile

agent forbade him sailing thither. He did not do so, and I fail to discover in what way these voyages of Frobisher can establish a title to territories which stretched along a shore at least a thousand miles away.* The discoveries of Davis were still more distant.

The bay was explored by "Frederic Anschild, who had set out from Norway or Ycelandia some years before with a design to find out a passage to Japan. He entered a strait, which twenty or thirty years later, was called Hudson's Straits. He wintered in Hudson's Bay, and returned the next spring to Denmark.†

Captain Hudson entered the bay in 1610, in search of a north-west passage. He is often credited with being the discoverer; and the English claim to the possession of the bay has been in part based upon his supposed discovery. Baron La Hontan says that he was in command of a Dutch ship, and when he left the bay returned to Holland. In this La Hontan is in error. Hudson made four voyages in search of a highway to the east. The first was in 1607, under the direction of a company of London merchants. He coasted the eastern shore of Greenland, and visited Spitzbergen. He sailed north to within eight degrees of the pole, and was compelled, on account of the ice, to return.

In 1608 he sailed a second time, and attempted to reach the East Indies by passing between Spitzbergen and Nova Zembla, but failed. The ardour of the London merchants was dampened by these failures, and they were not willing to incur further expense.

Hudson repaired to Holland, where he was engaged by the Dutch East India Company, through the influence of Moucheiron, and in April, 1609, the *Crescent*, under his command, manned by a mixed crew of Dutch and English, put to sea in search of a north-west passage. This time he sailed along the coast of Nova Scotia to Sandy Hook, passed through the Nar-

* Hackluyt, vol. 3, pp. 52-129.

† La Hontan's Memoirs.

rows, discovered and explored the Hudson river, and gave to Holland a claim upon the country which subsequently became the Province of New Netherlands. He sailed from America to Dartmouth. From thence he sent "a brilliant account of his discoveries," to the Dutch Company, but they refused to search further for a north-western passage to southern Asia.

In 1610 Hudson made his fourth voyage under the direction of a company of English merchants. He entered the straits which bear his name. He supposed when he came upon the wide gulf that he had indeed gained his object. He voyaged along the coast, and found himself within an inland sea. He still hoped to discover a western strait, and resolved to winter in the bay. For this no adequate preparation had been made. When spring opened, the ship's supplies were exhausted, and he was compelled to make ready for a return. The ship became encompassed with vast fields of ice. The crew, who were discontented before, now mutinied. Hudson, his only son, and seven others were placed in a boat. Four of the seven were sick at the time. Philip Staffe, the ship's carpenter, asked leave to share the fate of his captain, and the request was granted him. Just when the ship made its way from the ice, the boat, with the ten who had been placed in it, was sent adrift, and was never after heard of. Such is a brief abstract of the voyages of Captain Hudson. The first two and the last of which were made under the patronage of Englishmen.*

It is recorded that Sir Thomas Button, in 1612, entered the bay and erected a cross at the mouth of Nelson river, and took possession of the country on behalf of the Crown of England; that Captains Baffin and Bylot entered the bay in 1615; that Captain Fox, by command of Charles the First, made a voyage to Hudson's Bay, in 1631, and finding the cross erected by Sir Thomas Button, with the inscription nearly worn out, renewed the inscription and again took formal possession; and

* N. Y. Hist. Doc., vol. 1, p. 61, 146—188.

that Captain James explored the southern part to which he gave his name, the same year.*

For more than thirty years after Fox's voyage, we have no account of the bay having been visited by any English ship.

After the restoration of Charles the Second, some noblemen and merchants undertook to establish a trade with the Indians, and to erect forts and factories upon the southern and western shores of the bay.

In the year 1667, after the visit of Radisson and Des Gros-silliers to London, one Zachray Gilham, in the interest of some London merchants, sailed through Hudson's Straits to the southern end of the bay, and erected a fort at the mouth of Rupert's river.

In the year 1669, another voyage was undertaken by the same adventurers, and one Captain Newland was sent by them to the mouth of Nelson river.

In 1670, those persons who were engaged in fitting out these expeditions applied to the King (Charles Second) for a charter, conferring upon them the exclusive property and trade of the Straits and Bay of Hudson and its coasts, which charter was granted them in May of that year. This charter professed to grant them in free and common socage, "all the lands and territories upon the countries, coasts, and confines of the seas, bays, lakes, rivers, creeks, and sounds aforesaid, that are not *already actually possessed* by, or *granted* to, any of our subjects, or *possessed* by the subjects of any other Christian Prince or State." These words imply the following propositions :—

That the grant to the Hudson's Bay Company should not be held to include :—

1st. Any portion of the country granted to any other British subject.

* Robeson's account of Hudson's Bay, Appendix 1, p. 4. In many of the maps published early in the last century the greater part of what is now called Hudson's Bay was then called Button's Bay. Hudson's Bay was, upon the west, but little more than what is now called James Bay. The company by extending the name, have increased the limits embraced by their charter.

2nd. Any portion of the country in the possession of any other British subject.

3rd. Any portion *possessed* by any other Christian Prince or State.

That it should include:—

1st. Any territory in possession of the Crown, not included in the above exceptions.

2nd. Any territory *not in the possession of any European nation*, to which, the Crown, through the diligence of the company, might acquire a title. The words imply, too, that the King was not prepared to deny the right of France, to a part of the country about the bay; and that he was not resting any right of the Crown upon prior discovery; but that he was disposed to look at the actual condition of things at the time the charter was granted. In this particular the position of the King was a proper one. Ninety-three years intervened between the voyages of Cabot and Hudson; sixteen years between the voyages of Baffin and Fox; and thirty-six years between the voyages of Fox and Gilham; that is one hundred and fifty years intervened between the first and seventh voyage. It will not be difficult to show that title, according to the usages of nations, cannot be based upon discovery made at some period long past. There must be, besides discovery, such acts of occupation or settlement accompanying the act of discovery, or following it within a reasonable time, as will serve to show that the authority of the sovereign has had a potential existence over the territory so claimed. Now there were no such relations existing between the explorations of Cabot, of Hudson, of Button, or of Fox, and any subsequent act of the English Sovereign as would indicate that he, from the first, intended making it a part of his dominions.

The charter to the Hudson Bay Company asserted only a conditional right in the King founded upon the then recent acts of his subjects, and related back to the voyages of Gilham in 1667 and no further.

It is worthy of note that the Company of New France had

received a similar charter in the year 1626 from Louis XIII., which included the whole country about Hudson's Bay.

In 1656, an order of the Sovereign Council of Quebec authorized Jean Bourdon, its Attorney-General, to make the discovery of Hudson's Bay. He went thither in a barque of thirty tons, and took possession in the name of the French King. While there, he made treaties of alliance with the Indians.*

"In 1661, Father Dablon, a Jesuit, and Sieur de Valliere were ordered by Sieur d'Argenson, at that time Governor of Canada, to proceed to the country about the Hudson's Bay; they went thither accordingly, and the Indians who then came back with them to Quebec, declared that they had never seen any Europeans there. †

"The Indians, anxious to continue their trade with the French in Canada, sent a party who returned with Dablon to Quebec, to invite the Canadians to establish trading posts on the Bay, and to send missionaries among them. Upon their way back, they seemed to have repented of what they had done, and *refused to conduct the MISSIONARIES to the Bay.*" ‡

"In 1663, the Indians from about Hudson's Bay returned to Quebec in further quest of traders, and D'Avangour sent thither Sieur de la Couture with five men, who proceeded overland to the said Bay, possession whereof he took in the King's name, noted the latitude, planted a cross, and deposited at the foot of a large tree, his Majesty's arms engraved on copper and laid between two sheets of lead, the whole being covered with some bark of trees."

"In the same year (1663) Sieur Duquet, King's attorney to the Prevôté of Quebec, and Jean L'Anglois, a Canadian colonist, went thither again, by order of Sieur D'Argenson, and renewed the act of taking possession by setting up his Majesty's

* Calliers to M. De Seignelay. N. Y. Hist. Col., vol. 9. p. 268.

† Ibid; also M. de Denonville to M. de Seignelay. p. 303, 4, 5.

‡ Memoir of the French in Canada from 1504—1706. Paris Doc. 6. N. Y. Hist. Col. Vol. 9 p. 784.

arms there a second time. This is proved by the arret of the said Sovereign Council of Quebec, and by the orders in writing of the said Sieurs D'Argenson and D'Avangour." *

In 1667, Radisson and des Grossilliers traversed the country from the St. Lawrence to the Upper Lakes and thence to the Bay—crossing from Lake Superior, of which the French had possession at the time.

They returned to Quebec, and proposed to the merchants there to conduct ships to Hudson's Bay—the proximity of which, to the principal fur district, was now ascertained. This proposal was rejected. They then went to Paris and explained the matter to the King's Ministers, but with no better success. They were persuaded by Lord Preston, the English Ambassador, to go to London, and to lay their scheme before certain persons there. They did so, and were favourably received. †

The London merchants, who entertained the project of the two Canadians, entrusted the prosecution of this discovery, not to them, but to Zachray Gilham, who had long been engaged in the Newfoundland trade. He sailed thither in a small vessel named the *None Such*. The discovery I here refer to is the one made known to them by Radisson and Des Grossilliers—that the fur trade north of the great lakes might be carried on, advantageously, from Hudson's Bay.

It is highly probable that they were not the first Frenchmen to cross from Lake Superior to the Bay, but that they were, as has been suggested by Denonville, led thither by the old *coureurs des bois*, with whom they had formerly carried on trade.

In November 1670, Talon wrote to Colbert:—"I learn by the return of the Algonquins, who will winter this year at Tadousac, that two European vessels have been seen very near Hudson's Bay, where they wigwam, as the Indians express it. After reflecting on all the nations that might have

* Memoir of the French in Canada. N. Y. Hist. Col. Vol. 9 p.p. 303, 4, 5. Charlevoix's, Vol. 3. Book 10.

† Ibid.

penetrated as far north as that, I can light only on the English who, under the guidance of a man named Degrossilliers, formerly an inhabitant of Canada, might possibly have attempted that navigation not much known and not less dangerous. I intend despatching thither overland some man of resolution to invite the Kilistinoes, who are in great numbers in the vicinity to that Bay, to come down to see us, as the Ottawas do, in order that we may have the first pick of what the latter savages bring us, *who acting as pedlars between those nations and us make us pay for a round-about of three or four hundred leagues*. The proposal made to me by Capt. Poulette, of Dieppe, ought to be mentioned here. This man, wise by long practice and experience acquired from an early age and became a skilful navigator, offers to undertake the discovery if not yet accomplished, of the passage between the two seas, the North and South, either by Davis Straits, or by Magellan, which he thinks more certain. After having doubled the opposite coast of America, as far as California, he will take the western winds and favoured by these, re-enter Hudson's Bay or Davis Straits. I have given him a letter which he is to present to you if he have not altered the plan, which would be to penetrate as far as China by one or the other of these passages. If you desire to hear him, my secretary will have him repair to you."*

In November, 1671, Talon writes to the King—"Three months ago I despatched with Father Albanal, a Jesuit, Sieur de Saint Simon, a young Canadian gentleman recently honoured by his Majesty with a title. They were to penetrate as far as Hudson's Bay; draw up a memoir of all they will discover; drive a trade in furs with the Indians, and especially reconnoitre whether there be any means of wintering ships in that quarter, in order to establish a factory, that might when necessary supply provisions to the vessels that will possibly hereafter discover, by that channel, the communication between the two seas—the north and the south. Since their departure, I received letters

* N. Y. Hist. Col. Vol. 9 p. 97.

from them three times. The last, brought from one hundred leagues from here, informs me that the Indians, whom they met on the way, have assured them that two English vessels and three barques wintered in the neighbourhood of that bay, and made a vast collection of beavers there. If my letters in reply are safely delivered to the said father, this establishment will be thoroughly examined, and his Majesty will have full information about it. As those countries have been long ago originally discovered by the French, I have commissioned the said *Sieur de St. Simon* to take renewed possession in his Majesty's name, with orders to set up the escutcheon of France with which he is entrusted, and to draw up his *proces-verbal* in the form I have furnished him.

"It is proposed to me to despatch a barque of sixty tons hence to Hudson's Bay, whereby it is expected something will be discovered of the communication of the two seas. If the adventurers who from their design subject the King to no expense, I shall give them hopes of some mark of honour, if they succeed; besides indemnifying from the fur trade which they will carry on with the Indians."*

In 1673, a Jesuit missionary was sent overland from Canada to discover the country and the situation of the Trading Posts of the Hudson's Bay Company. Under the pretence of friendship, he carried with him letters to *Des Grossilliers* from his friends in Canada, which led the Governor of the Company to suspect that he was corresponding with the French to the prejudice of the English interests in that section. *Des Grossilliers* and *Radisson* were dismissed, after having been in the service of the English nearly six years, and returned to Canada.*

In 1676, *Radisson* and *Des Grosilliers* having obtained pardon for their defection, a company was formed at Quebec, who sent them to Hudson's Bay, where they formed a settlement north of the said bay on the River Bourbon, which is the

* N. Y. Hist. Col., vol. 9, pp. 72-73.

† *Rohson's Hudson's Bay*, Appendix 1, pp. 6-8.

one the English seized last year (1684), in consequence of a new treachery on the part of Radisson, who returned to their service and conducted them thither.*

In 1679, Sieur Joliet prepared a narrative and maps of his voyage to Hudson's Bay, which the farmers of the revenue of Canada demanded of him. This *relation* is dated the 27th of October, 1679, and signed Joliet.†

In October 1681, Duchesneau, the Intendant of New France, in a letter to Seignelay, says:—"The English are still at Hudson's Bay, on the north, and do great damage to our fur trade. The farmers of the revenue suffer in consequence by the diminution of trade at Tadoussac, and throughout the entire country, because the English draw off the Ottawa nations for the one and the other design.

"They have two forts in the said bay, the one towards Tadoussac and the other at Cape Henriette Marie, on the side of the Assinnibouetz.‡

"The Ambassador of the King of England, at Paris, complained that the man named Radisson and other Frenchmen having gone with two barques, called *le St. Pierre* and *la Ste. Anne*, into the river and port of Nelson in 1682, seized a fort and some property of which the English have been in possession for several years.

"Radisson and Des Grossiliers maintain that these allegations are not true, but that having found a spot on the Nelson river adapted to their trade, more than 150 leagues distant from the place where the English were settled in Hudson's Bay, they took possession of it in the King's name, in the month of August, 1682, and had commenced building a fort and some houses there.

"That on the fourteenth of September following, having heard cannon, they went out to examine, and on the 26th found some beginning of houses on an island, and a vessel aground near the coast.

* Calliers to Seignelay, N. Y. Hist. Col., vol. 9, [p. 268.

† N. Y. Hist. Col., vol. 9, p. 795.

‡ N. Y. Hist. Col., vol. 9, p. 166.

"That these houses had been begun since they had entered the river, and had set about working at their fort and building, and, therefore, that they were the first occupants.

"That since then each having wished to maintain his establishment, the French were become the masters.

"That the ice and bad weather having caused the destruction of the English ship, some men belonging to it had died ; but that they had, on their part, treated them with great moderation and kindness, and rendered every assistance to the English, who appeared satisfied."*

The person in command of the English was John Bridger, the Governor of the Hudson's Bay Company. He arrived, say the English accounts, a few days before the Canadians. The French established themselves on the south branch, then called Ste. Therese, now Hayes river. They ordered Bridger away from the country. He declined to obey. In February of the following year, the English were seized and sent to the southern end of the bay, with the exception of Gilham and Bridger, who were carried prisoners to Quebec. The son of Des Grossilliers and five others were left in possession of Fort Bourbon.† Upon reaching Quebec, Bridger and Gilham were released by La Barre, and their vessels restored.

M. de la Barre, the Governor of New France, on the 12th of November, 1682, writes: "As to what relates to Hudson's Bay, the company in Old England advanced some small houses along a river which leads from Lake Superior (Winnipeg). As possession was taken of the country several years ago, he will put an end to this disorder, and report next year the success of his design."

On the 30th of April, 1683, M. de la Barre writes: "Two detachments of Frenchmen have proceeded to the north for the purpose of preventing the English of Hudson's Bay entering on French territory, and obstructing the trade the French

* Paris Documents, 6, N. Y. Hist. Col., vol. 9, 798.

† Robson's Hudson's Bay.

carried on with the Assillibois, Themiscamings, Puisescamins, and Christinoes."

On the 5th of August, 1683, the King writes to M de la Barre: "I recommend you to prevent, as much as possible, the English establishing themselves in Hudson's Bay—possession whereof has been taken in my name several years ago; and as Colonel Dungenot (Dongan,) who is appointed by the King of England, Governor of New York, has had precise orders from his Majesty, to keep up a good correspondence with you, carefully to avoid every thing that will possibly interrupt it, I doubt not but the difficulties you have experienced from the English will cease henceforth."

On the 4th and 9th of November, 1683, M. de la Barre writes the King, that—"The people who had been at Hudson's Bay have returned, after having encountered extreme dangers. They erected a small fort in which they left a garrison of a few men, about four leagues up a river, 200 leagues north of any English settlements. It is expected that communication can be had with it overland, as will be seen by the maps he sends. He has received his Majesty's instructions respecting Hudson's Bay, and has engaged those who have organized that expedition, to form a company, and send and purchase a ship in France." *

In 1683, an Ordinance of the King was promulgated to the effect, "That all merchants and settlers of New France, who will purchase beaver, moose and peltries, in Hudson's Bay, Perce Island and other parts of New France, Acadia excepted, shall be bound to bring said beaver and moose to Quebec, that they may be paid for them, and one-fourth retained for the farmers of the revenue."†

In April, 1784, the King writes to the Governor of Canada, that—"The King of England has authorized his Ambassador to speak to me respecting what occurred in the River Nelson, between the English, Radisson and Des Grossilliers; whereupon

* Paris Documents, 6. N. Y. Hist. Col. vol. 9. p p. 798-9.

† N. Y. Hist. Col. vol. 9, p. 800.

I am happy to inform you, that as I am unwilling to afford the King of England any cause of complaint, and as I think it important, nevertheless, to prevent the English establishing themselves on that river, it would be well for you to have a proposal made to the Commandant at Hudson's Bay, that neither the French nor the English should have power to make any new establishments, to which I am persuaded he will give his consent the more readily, as he is not in a position to prevent those which my subjects would wish to form in said Nelson's river." *

On the 10th of April, 1684, the Minister of Marine addressed M. de la Barre, in reference to the restoration of the vessel to Gilham, which had been captured in Hudson's Bay by Radisson and Des Grossilliers. He says—"It is impossible to imagine what you pretended, when of your own authority, without calling on the Intendant, and submitting the matter to the Sovereign Council, you ordered a vessel to be restored to one Guillam (Gilham), which had been captured by Radisson and Grossilliers, and in truth you ought to prevent these sort of proceedings, which are entirely unwarranted, coming under his Majesty's eyes. You have herein done what the English will be able to make a handle of, since in virtue of your ordinance you caused a vessel to be surrendered which ought strictly to be considered a pirate, as it had no commission; and the English

* The King to M. de la Barre, 10 April, 1684. Paris, Dec. 6, N. Y. Hist. Col. p. 799.

Note.—The arrangement here suggested was made shortly after. The Governor of New France says of it,—“The convention concluded with England, that the River Bourbon

Port Nelson, shall remain in joint occupation of the two Crowns, is not advantageous to the French, for the voyages of the English are too dangerous, on account of their attracting the *coureurs des bois* as much as possible, besides purchasing the beaver at a higher rate and furnishing the goods cheaper than the French. In his opinion, it would be more beneficial for the company and colony that the French merchants restore the posts at the head of the bay which they took, and that the French should leave them Port Nelson or River Bourbon. If this arrangement were feasible, the Indians could thus be intercepted by land, for it would be useless to attempt to become masters of the upper part of the rivers Bourbon and Ste. Therese, inasmuch as it is impossible to prevent the Indians trading with the English.”—N. Y. Hist. Col. vol. 9.

will not fail to say that you so fully recognized the regularity of this ship's papers, that you surrendered it to the proprietors, and they will thence pretend to conclude that they have taken legitimate possession of the River Nelson before Messrs. Radisson and Des Grossilliers had, which will be very prejudicial to the colony."*

"Radisson having gone from Canada to France, in the beginning of the year 1684, went to London and once more gave in his adhesion to the English Hudson's Bay Company, and returned to Port Nelson with five ships which they gave him, destroyed the French factories that he had himself erected with Des Grossilliers, in 1682, plundered their stores, carried off sixty thousand weight of beaver, which he took to London, whither also he conveyed all the French who happened to be at Nelson, among whom was Des Grossilliers' son, his nephew, and did the Company 400,000 livres damage."†

"In 1684, the French Company fitted out two barques to proceed to Hudson's Bay under the command of Sieur de Lamartiniere. They sailed on the 19th of June, tarried at St. Paul's Bay until the 12th of July, and arrived at Port Nelson in the morning of the 22nd of September of the same year; having entered the River St. Therese, they encountered two, leagues up, a boat coming towards them having five Englishmen on board, who enquired of Lamartiniere what he was about in that country, which was the property of the King of England. He answered that the river belonged to the King of France; that he was come to trade there, and that he wished to speak to the English commandant. After an interview of six hours they agreed to prosecute their trade without troubling each other, and that if any difference occurred between them it would be decided by their masters, and that meanwhile Lamartiniere could pass their fort. Some Frenchmen perceiving that all preparations were being made

* N. Y. Hist. Col., vol. 9, p. 800.

† *Ibid.* Also N. Y. Hist. Col., vol. 9, p. 918. Paris, Doc. 7.

See also Guerin's Maritime History of France, vol. 3.

within the fort to insult the French, and that a battery of twenty-four guns was erecting to sink them whilst passing, Lamartiniere reproached the governor of the fort, of whom he demanded six men as hostages, offering him as many of his. The English having refused to accede to this, Lamartiniere detached during the darkest part of the night following thirty men to surprise the English, who were alarmed by their sentinels. The French were, in consequence, obliged to retire in haste, and resolved to pass from the north to the south branch of that river, and enter another, called *La Gargoussee* (Cartridge river), which was opposite their ship, where they wintered, half a league from the river.

“In June, 1685, they ascended four leagues above the English, where they made a small settlement.”

On the 15th of July they set out to return to Quebec, having obtained, in six weeks, 20,000 livres' worth of beaver. “After having passed Hudson's Bay, they met in the Strait a vessel of 40 or 50 tons burden, called ‘The Little Pink,’ which arrived without opposition. She was laden with black tobacco, merchandise for the trade, and 3,000 weight of powder, some woollens, and 400 fusils, all valued with the vessel, at 20,000 livres. This vessel was followed by ‘The Great Pink,’ which they did not think proper to attack. Two days afterwards they met another vessel, of ten or twelve guns, commanded by Osler, on board of which was the man named Briguere (Governor Bridger), who was going to relieve the Governor at the head of the bay. He is the same that Radisson brought to Quebec three years ago in the ship that M. de la Barre restored to him. This Governor gave them chase, and obliged them at the end of two days to throw themselves into a cove, at the bottom of which was a little river, where they ran aground. As the English vessel could not do the same, he left at the end of four days. Before leaving, he asked a parley of the commander of the barks, and told him that Radisson had gone with Chouars, his nephew, fifteen

days ago, to winter in the River Ste. Therese, where they wintered a year. The Governor having left, they hoisted sail, and arrived at Quebec on the first of October, 1685.”*

In a memoir on the Present State of Canada, by M. de Denonville addressed to M. de Seignelay, on the 12th of November, 1685, he says: “We also see the English establishing themselves at the North Bay, where they will be more injurious to us than in the direction of Acadia; for if their establishments continue as they have begun at the three places on that bay which they actually occupy, and on the River Bourbon, or Port Nelson, we must expect to see all the best of the beaver trade, both as to quality and quantity, in the hands of the English; if not expelled thence, they will get all the fat beaver from an infinite number of nations in the north, *which are being discovered every day*; they will abstract the greatest portion of the peltries, that reach us at Montreal through the *Ottawas and Assinnibois and other neighboring tribes*, for these will derive a double advantage from going in search of the English at Port Nelson. They will not have so far to go, and will find goods at a much lower rate than with us. That is evident from the fact that our Frenchmen have seen quite recently at Port Nelson some Indians who were known several years ago to have traded at Montreal. The ports at the head of the bay, adjoining the rivers Abitibis and Nemisee, can be reached through the woods and seized; our Frenchmen are acquainted with the road. But in regard to the ports occupied by the English in the River Bourbon or Port Nelson, it is impossible to hold any posts below them, and convey merchandise thither, except by sea. Some pretend that it is feasible to go there overland; but the river to reach that quarter remains to be discovered, and when discovered could only admit the conveyance of a few men, and not of any merchandise. The best informed on the subject agree herein. . . . In regard to Hudson’s Bay, should the King not think proper for enforcing the reasons his Majesty has for opposing the usurpa-

*N. Y. Hist. Col., vol. 9, p. 800.

tions of the English on his lands, by the just titles, proving his Majesty's possession long before the English had any knowledge of the said country—nothing is to be done but to find means to support the company of the said bay, formed in Canada, by the privilege his Majesty has been pleased this year to grant to his subjects of New France, and to furnish them for some years a few vessels of one hundred and twenty tons only, well armed and equipped. I hope with this aid, our Canadians will support this affair, which will otherwise perish of itself; whilst the English merchants more powerful than our Canadians, will, with good ships, continue their trade, whereby they will enrich themselves at the expense of the colony and the King's revenue."*

In March, 1686, the Directors of the French Company obtained from M. de Denonville a body of Canadian and regular troops, under the command of M. de Troye. He set out overland, accompanied by Messrs. D'Iberville, St. Helène, and Maricourt. They reached Hudson's Bay in June, and captured three of the company's forts.†

In 1687, D'Iberville returned to Quebec with a ship which he and nine others had taken from the Hudson's Bay Company, loaded with peltry, that he had found in their factories.

In 1688 he went back to Hudson's Bay. The British had sent thither three vessels to expel the French. The ships were all taken by D'Iberville, and their crews, who were dying of scurvy, were to a man killed.‡

In 1689 the British attacked Fort Ste. Anne. They were repulsed, and one ship was taken by D'Iberville. The prison-

* N. Y. Hist. Col., vol. 9, p. 286.

† The French *coureurs des bois*, with one hundred men, took from the English three forts which they were occupying in Hudson's Bay.—N. Y. Hist. Col., vol. 9, p. 801.

Garneau gives the date of this expedition as 1685, and the Hudson's Bay Company as 1686. The latter is the true date. (See Instructions to Frontenac, where the date is given.) The forts taken were Forts Rupert, Ste. Anne, and a fort on the Monsonia. The furs taken at Ste. Anne were valued at 50,000 crowns.

‡ Referred to by King William in his declaration of war against France in 1689.

ers that had been taken by the French at the time of the attack upon the forts and since, were put on board one of the vessels, with leave to return to England. D'Iberville sailed for Quebec, in a ship carrying twenty-four guns, and loaded with peltry. *

In 1691, Fort Ste. Anne was re-taken by the British.†

In 1694, Fort Bourbon was attacked by the French with two frigates, under the command of D'Iberville, and was taken. It was at this time that D'Iberville defeated three British ships off the mouth of Nelson river, capturing one and sinking a second. This victory established for a time the supremacy of France in Hudson's Bay.

From that time until after the signing of the Treaty of Utrecht, a period of twenty years, the possessions of Hudson's Bay Company in the bay were confined to the single fort at the mouth of the Albany river, which, by the conditions of the Treaty of Ryswick, they were to have surrendered to the French. Such is a brief summary of the contest between France and England, during the last half of the seventeenth century, for the sovereignty of the Hudson's Bay.

The Treaty of Ryswick, which was concluded in 1697, provided that :—

"7th. The Most Christian King shall restore to the said King of Great Britain all countries, islands, forts, and colonies, wherever situated, which the English did possess before the declaration of this present war. And in like manner the King of Great Britain shall restore to the Most Christian King

* In the Instructions to Frontenac, dated the 7th of June, 1689, it is said that "The intelligence of this reciprocal invasion caused a meeting at London of Commissioners on the part of his Majesty and of the King of England, at which, not being able to concur as to the facts, they agreed to postpone the negotiations to the first of January of the present year. It could not be continued, in consequence of the revolution in England. As the English in the present troublesome conjuncture in that kingdom will not seemingly have adopted great precaution in those parts, his Majesty desires him to afford that Company the protection it will need, as well for the expulsion of the English from the parts they occupy there, as for the continuation of the trade.—N. Y. Hist. Col., vol. 9, p. 428.

† Garneau's History of Canada.

all countries, islands, forts, and colonies, wheresoever situated, which the French did possess before the said declaration of war; and this restitution shall be made on both sides, within the space of six months, or sooner if it can be done. And to that end, immediately after the ratification of this Treaty, each of the said Kings shall deliver or cause to be delivered to the other, or to commissioners authorized in his name for that purpose, all acts of concession, instruments, and necessary orders, duly made and in proper form, so that they may have their effect.

“8th. Commissioners shall be appointed on both sides to examine and determine the rights and pretensions which either of the said kings hath to places in Hudson's Bay; but the possession of those places which were taken by the French during the peace that preceded this present war, shall be left to the French by virtue of the foregoing article.”

By article seven, the principle of reciprocal restitution, so far as it related to conquests made during the war, was agreed to. The *statu quo ante bellum* was to be established. Lest any doubt should arise as to the forts taken by the French before the war began, article eight declares that places “taken by the French in Hudson's Bay during the peace that preceded this present war,” shall be left to the French by virtue of the seventh article. This is not simply the application of the principle of *uti possidetis* at the close of the war, which would have given France all of the places taken by D'Iberville and others which she then held; it is the application of the principle to the condition of things immediately preceding the war. It was saying to France, “What you took from us before the war began, shall be yours, and shall be restored to you within the space of six months by virtue of the words:— ‘The King of Great Britain shall restore to the Most Christian King all countries, islands, forts, and colonies, wherever situated, which the English did possess before the declaration of war.’”

Commissioners were appointed under the Treaty; but I

need not say that they were not at liberty to question the rights of France to the possession of those places which had been taken from the English before the war began. Of these France was made the Sovereign, by the Treaty. The duty of the commissioners, it would seem, was to decide after due examination, the rights of France and England, respectively, to places other than those which the Treaty made unconditionally the property of France. It was not impossible for the entire country about the bay, by the decision of the Commissioners, to become the property of France; it was impossible that it could so become a possession of England.

Had it been intended to make them the possessions of France, pending the decision of commissioners only, it would have been so stated, or the latter half of the eighth article would have been embraced in the seventh; but following as it does a provision for the appointment of commissioners to determine the rights and pretensions of the two kings to places in Hudson's Bay, it must be regarded as a limitation upon the scope of the Commission rather than a provision for the temporary possession of the places referred to, the only effect of which would have been to throw upon the English Government the *onus* of proving a superior title to the country.

It is obvious that as a claimant to Hudson's Bay and the adjacent country, France stood, after the Treaty of Ryswick, in a more advantageous position than England. The Hudson's Bay Company held Fort Albany. It had been captured by the French in a time of peace, and was re-taken by the English during the war; and was therefore by the Treaty itself awarded to France.

In July, 1700, the Hudson's Bay Company addressed a communication to the Lords of Trade in reference to their boundaries. They proposed the Albany river, or the 53rd parallel of north latitude, as the boundary on the West coast of the bay, and Rupert's river as the boundary on the East coast. Beyond these limits neither Government was to permit its

subjects to trade in the territory of the other. They informed the Lords of Trade that "by such limitations the French will have all the country to the south-eastward betwixt Albany Fort and Canada to themselves, which is not only the best and most fertile part, but is also a much larger tract of land than can be supposed to be to the northward, and the Company deprived of that which was always their undoubted right." The French, while maintaining that they were by the prior occupation of the surrounding country, and by the Treaty of St. Germain-en-Laye rightful owners of the whole country, seemed ready to accept the line of the fifty-fifth parallel, between Albany and York Forts, as the boundary between the possessions of the two countries in the region of Hudson's Bay.* This limit the Company declined to accept, "as they would thereby be the instruments of their own destruction."

In January, 1701, Mr. Popple, by order of the Lords of Trade, inquired of the Governor of the Hudson's Bay Company, "whether in case the French cannot be prevailed with to consent to the settlement of the boundary proposed, the Company will not think fit to consent that the limits on the east side of the bay be extended to the latitude of $52\frac{1}{2}$ degrees,

* "All the world knows," says La Hontan, "that Canada reaches from the 39th to the 65th degree of North, that is, from the South of Lake Erie to the North side of Hudson's Bay; and from the 284th to the 336th degree of longitude, viz., from the river Mississippi to Cape Race. . . . Were I to reckon in all the countries that lie to the North-West of Canada, I should find it larger than Europe; but I confine myself to what is discovered, known and owned—I mean to the countries in which the French trade with the natives for beavers, and in which they have forts, magazines, missionaries, and small settlements."—*Memoirs of Travels in N. America* (1683-93).

As to the situation of the country possessed by the French in North America, and commonly all comprehended under the prevailing name of Canada, the seat and residence of their Governor-General being upon the place properly so-called—its situation is from about 54 degrees of North latitude to the *Eastward* of Port Nelson, in the country of the Escimoes, extending itself all the way South-West to the mouth of the Mississippi river, which falls into the Bay of Appalachio, in the Great Bay of Mexico, about the latitude of 28 degrees and 30 minutes, comprehending as it goes, their part of Newfoundland, the Island of St. Peter, Acadia or Nova Scotia, which borders upon the British Province of New Hampshire whose boundary to the *Eastward* is the little River St. Croy (as the French allege).—Captain Vetch (1708), *Pownall MSS.*, vols. 1 and 4.

with whatever further they may think it advisable to propose in reference to their own affairs, for the more easy settlement of all disputes between the Company and the French in Hudson's Bay."*

The Company on the 12th of February following made the further offer as to the limits between themselves and the French:

"1. That the French be limited not to trade by wood-runners or otherwise, nor build any house, factory, or fort to the northward of Albany river, vulgarly called Checheawan, on the West main or coast.

"2. That the French be limited not to trade by wood-runners or otherwise, nor build any house, factory, or fort to the Northward of Hudson's River, on the East main or coast."

By Propositions 3 and 4, the English were to be restrained in like manner from trading south of these limits.

By Propositions 5 and 6, the islands of the bay were to have been divided in a manner corresponding to the limitary lines upon each coast.

"7. That neither the French nor the English shall at any time hereafter extend their bounds contrary to the aforesaid limitations, or instigate the natives to make war on or join with either in any acts of hostility to the disturbance or detriment of either nation."

The Company were willing to agree to these terms upon condition, "*that they were secured against any claim that has been made, or that may be made on them, under the Eighth Article of the Treaty of Ryswick.*"

They were ready to give up Fort Albany, and accept the forts north of the boundary line which they had proposed, but only upon condition that the limits were definitely settled. They said that if the limits they had proposed "are not accepted, they will not feel themselves bound by this or any former concession of like nature, but must insist upon their right to the whole bay."

* Pownall's MSS., see Appendix, O.

I need say nothing concerning this threat. If the Company ever had any such right, the Eighth Article of the Treaty of Ryswick put it out of the power of the English Government to make so extravagant a demand. When the Company asked to be secured against any claim under this article of the Treaty, they in effect admitted that a claim might be made. It is not difficult to understand what that claim was. I have already stated that the Eighth Article of the Treaty made the forts and settlements which the French had taken from the English before the war, French possessions, which by the Seventh Article were to remain to France, and to be restored to her where, at the close of the war, they were in the hands of the English. By the provisions of the Treaty, Fort Albany became a possession of France. The Company proposed a line of action which could only have been defended had the principle of *uti possidetis* been the one upon which the Treaty had been based. They were not willing to surrender Fort Albany without an equivalent, which, by the Treaty, they had no right to demand. The feature of the Treaty which impressed itself most strongly upon the minds of the Company, seems to have been this—that no boundary line could be drawn which would exclude the French from the territory that would remain to the Company. The Company sought, not a fulfilment, but an amendment of the Treaty. Their propositions and memorials to the English Government show that they were most anxious to have a boundary of mutual exclusion, which under the treaty was impossible. They wanted in exchange for Fort Albany the places held by the French north of the line of division which they expressed themselves ready to accept.

The motive of the Company is obvious. The French were in possession of the Severn and Nelson rivers. The command of these rivers would have given them the greater part of the fur trade north of the limitary line proposed. When this fact is remembered, we can fully appreciate their efforts to escape from the stipulations of the Treaty, and to proceed

with the Commission as if there had been no agreement on the part of England to leave France in possession of all she held before the war.

On the 9th of January, 1702, the Lords of Trade asked the Hudson's Bay Company "to lay before them whatever they may think fit to offer in relation to the trade and security of the place at this time."*

On the 19th of the same month, the Company state "that they have been left in such a deplorable state by their great losses by the French, both in times of peace as well as during the late war, together with the hardships they lie under by the late Treaty of Ryswick, they may be said to be the only mourners by the peace." Albany Fort—their only possession—is surrounded by the French on every side, "by their settlements on the lakes and rivers from Canada to the northwards towards Hudson's Bay, as also from Port Nelson (Old York Fort) to the southward." They say that "the French have made another settlement, at a place called New Severn, 'twixt Port Nelson and Albany Fort, where they have hindered the Indians coming to trade at the Company's Factory." They ask for "three men of war, one bomb-vessel, and two hundred and fifty soldiers besides the crews, in order that the vast tract of land may not be lost to the kingdom."

On the 19th of May, 1709, the Lords of Trade "ask the Company for an account of the encroachments made by the French upon the territories and places within the limits of the said Company's Charter." This the Company gave, in a memorial in which they complain of the sacrifice of their rights by the Treaty of Ryswick. They refer to the Report of the Commissioners in 1687 in reference to the damages they had sustained from the French, and repeat the King's resolution thereupon; and in a long communication to the

* This was just before the commencement of the War of the Succession. Each of the communications asked from the Company, were sought in view of negotiations for peace, at the Hague, 1709, at Gertruydenberg, 1710, and at Utrecht, 1711-12.—*Memoirs de Torcy*, vol. 2; *Coke's Marlborough*, vol. 3; *Bolingbroke's Letters on History*.

Queen, in December, 1709, they say that "when your Majesty in your high wisdom shall think fit to give peace to those enemies whom your victorious arms have so reduced and humbled, and when your Majesty shall judge it for your people's good to enter into a Treaty of Peace with the French King, your petitioners pray that the said Prince be obliged by such Treaty to renounce all right and pretensions to the Bay and Straits of Hudson, to quit and surrender all posts and settlements erected by the French or which are now in their possession, as likewise not to sail any ship or vessel within the limits of the Company's Charter, and to make restitution of the £108,514 19s. 8d. of which they robbed and despoiled your petitioners in times of perfect amity between the two kingdoms."

On the 8th of February, 1712, they addressed a memorial to the Lords of Trade, in which they proposed that "No wood-runners, either French or Indians or any other person whatsoever, be permitted to travel or seek for trade beyond the limits hereinafter mentioned. That the said limits begin from the island called Grimmington's Island or Cape Perdrix in the latitude of $58\frac{1}{2}$ degrees north, which they desire may be the boundary between the English and the French on the coast of Labrador, towards Rupert's Land on the east main, and Nova Britannia on the French side, and that no French ship, barque, boat, or vessel whatsoever shall pass to the northward at Cape Perdrix or Grimmington's Island towards or into the Straits or Bay of Hudson on any pretence whatsoever.

"That a line supposed to pass to the south-westward of the said Island of Grimmington or Cape Perdrix to the great Lake Miskosinke at Mistoveny,* *dividing the same into two parts*† as in the map now delivered, and that the French nor any others employed by them shall come to the north or

* Now called Lake Mistassinnie, or Mistassin.

† Upon all the English maps since this period the boundary is extended to the highlands south of this lake.

northward of the said lake, or supposed line by land or water, on or through any rivers, lakes, or countries, to trade, or erect any forts or settlements whatsoever, and the English on the contrary, not to pass the said supposed line either to the southward or eastward.

“That the French be likewise obliged to quit, surrender, and deliver up to the English upon demand York Fort (by them called Bourbon) undemolished, together with all forts, factories, settlements, and buildings whatsoever taken from the English, or since erected or built by the French, with all the artillery and ammunition in the condition they are now in, together with all other places they are possessed of within the limits aforesaid or within the Bay and Straits of Hudson.”

The Company add that their Charter constituted them the lord proprietors of all those lands, territories, seas, straits, bays, rivers, lakes, and soundings within the entrance of the Straits.

On the 19th of the same month, the Lords of Trade write to the Earl of Dartmouth to say “that in obedience to her Majesty’s commands, they have considered the petition of the Hudson’s Bay Company, and that they are of opinion that they have a good right and just title to the whole Bay and Straits of Hudson.”

They state further that they have received from the Company a memorial, a copy of which they enclose to his Lordship, and upon which they observe “that it will be for the advantage of the said Company that their boundaries be settled,” and they suggest that this, with other matters to which they refer, be “recommended to her Majesty’s Plenipotentiaries at Utrecht.”

All these representations of the Hudson’s Bay Company were made upon the assumption that the War of the Succession, which began in 1702, would put an end to the Treaty of Ryswick, and that the stipulations therein made by England and France were no longer binding upon either. This is not the rule. “Transitory conventions are perpetual in their na-

ture, so that being once carried into effect, they subsist independent of any change in the sovereignty and form of government of the contracting parties, and although their operation may, in some cases, be suspended during war, they revive on return of peace without any express stipulation—such are treaties of cession, boundary, or exchange of territory, or those which create a permanent servitude in favour of one nation within the territory of another.”*

“It is of great importance,” says Vattel, “to draw a proper distinction between a new war and the breach of an existing treaty of peace, because the rights acquired by such a treaty still subsist, notwithstanding the new war, whereas they are annulled by the rupture of the treaty on which they were founded. It is true, indeed, that the party who had granted those rights, does not fail to obstruct the exercise of them during the course of the war, as far as lies in his power, and even may, by the right of arms, wholly deprive his enemy of them, as well as he may wrest from him his other possessions. But in that case he withholds those rights as things taken from the enemy, who, on a new treaty of peace, may urge the restitution of them.”

The subject matter of the seventh article of the Treaty of Ryswick is of such a nature that it could not be affected by a declaration of war made five years later. The War of the Succession was adverse to France, and England was enabled to make demands in reference to Hudson's Bay, at its conclusion, which the triumphs of her arms may have justified, and it is upon the treaty which followed, that her sovereignty to the shores of the bay must rest. It is equally certain that before 1713 it was the recognized possession of France. Being unconquered, it was, during the war, as much French territory as Normandy. What effect the ratification of the Treaty of Ryswick had upon the Charter of the Company, I shall by and by consider.

* Wheaton's International Law, part 3, sec. 268; see also Vattel, B. 2, chap. 12, neu. 192; Kent's Com., vol. 1, 420, *Society for Propagating the Gospel, v. New Haven, & Wheat R.*, 404.

The provisions of the Treaty of Utrecht, concluded in 1713, relating to the claims of France and England in Hudson's Bay, are as follows :*

"X.—The said Most Christian King shall restore to the kingdom and Queen of Great Britain, to be possessed in full right, the Bay and Straits of Hudson, together with all lands, seas, sea-coast, rivers, and places situated in the said bay and straits, and which belong thereunto, no tracts of land or sea being excepted, which are at present possessed by the subjects of France. All which, as well as any buildings there made, in the condition they now are, and likewise all fortresses there erected either before or since the French seized the same, shall within six months from the ratification of the present Treaty, or sooner, if possible, be well and truly delivered to the British subjects having commission from the Queen of Great Britain to demand and receive the same entire and undemolished, together with all the cannon and cannon-ball, and with the other provisions of war usually belonging to cannon. It is, however, provided that it may be entirely free for the Company of Quebec, and all other the subjects of the Most Christian King whatsoever, to go by land or by sea, whither-soever they please out of the lands of the said bay, together with all their goods, merchandises, arms, and effects of what nature or condition soever, except such things as are above reserved in this Article. But it is agreed on both sides to determine within a year by commissaries to be forthwith named by each party, the limits which are to be fixed between the said Bay of Hudson and the places appertaining to the French, which limits both the British and French subjects shall be wholly forbidden to pass over, or thereby go to each other by sea or by land. The same commissaries shall also have orders to describe and settle the boundaries between the other British and French colonies in those parts

"XI.—The above-mentioned Most Christian King shall take care that satisfaction be given, according to the rule of

* Chalmer's Collection of Treaties, vol. 1, pp. 378-9-80.

justice and equity, to the English Company trading to the Bay of Hudson, for all damages and spoil done to their colonies, ships, persons, and goods, by the hostile incursions and depredations committed by the French in time of peace, an estimate being made thereof by commissaries to be named at the requisition of each party. . . ."

On the 4th of August, 1714, the Hudson's Bay Company renewed their application to the Lords of Trade for a settlement of the boundary between their territory and Canada. They again described from Cape Perdrix to the great Lake Miskosinke at Mistoveny (Mistasin), the boundary asked for in February, 1712; but they added to their proposition of that date, the words, "and from the said Lake to run south-westward into 49 degrees north latitude, as by the red line may more particularly appear, and that latitude be the limit. . . ."

It is quite clear from the correspondence which passed between the two Governments at the time that the Treaty was being negotiated, that no such pretension was put forward by the English, and that it was upon the east of the bay alone that the Hudson's Bay Company made any suggestions in reference to the boundary.

In August, 1719, in a memorial to the Lords of Trade, the Hudson's Bay Company admit that the bay and straits have been surrendered to them according to the terms of the Treaty; but they complain that since the conclusion of the Peace—viz., in 1715—the French had made a settlement at the head of Albany river,* upon which they have their principal factory, intercepting the Indian trade, and will ultimately ruin their factories if not prevented—and they renew the desire expressed in their petition of 1714, that except upon the Labrador coast, the French might be prevented going north of the forty-ninth parallel.

The English Government undertook to refer the "several matters pursuant to the 10th, 11th, and 15th Articles of the Treaty of Peace with France" to the commissaries who had

* This may have been the Fort built by Lieutenant Noüe in 1717, by order of Vaudreuil.—See Minute of *Conseil de Marine*. Appendix K.

been appointed under the Commercial Treaty of Utrecht for the purpose of giving effect to the provisions of that Treaty ; but they were informed that the French commissaries could not deal with the subjects referred to in the Treaty of Peace.*

In 1719, commissioners were appointed for the purpose. The demands of the English commissioners were, that the limits should be those which the Hudson's Bay Company had prayed for since the peace ; that the fort erected by Lient. Nouë at the head of Albany river should be given up, as coming within the stipulations of the Treaty ; and that no new posts should be established on any of the rivers which were discharged into Hudson's Bay. When pretensions were thus put forward by the English to so large a territory, the French commissioners avoided any further conference. Nor is this at all surprising. I think these demands can be conclusively shown to have been inconsistent with the understanding arrived at between the two Governments while the *Tenth Article* of the Treaty of Utrecht was under consideration.

In a memorial addressed by the Marquis de Torcy to Mr. Prior, one of the English Plenipotentiaries to the French Court, dated the 7th of January, 1713, New Style, he says : " The Plenipotentiaries of Great Britain insist that it shall be expressed that *France shall restore, not only what has been taken from the English, but also all that England has ever possessed in that quarter. This new clause differs from the plan, and would be a source of perpetual difficulties ; but to avoid them, the King has sent to his Plenipotentiaries the same map of North America as had been furnished by the Plenipotentiaries of Great Britain. His Majesty has caused to be drawn upon this map, a line which describes the boundaries in such a manner as he has reason to believe they may easily agree [as to] this point on both sides.*" †

On the following day, Mr. Prior addressed a letter to Lord Bolingbroke, in which he says : " As to the limits of Hudson's Bay, and what the Ministry here seem to apprehend, at

* See Pownall's MSS., vol. 5, p.p. 1-37.

† Correspondence of Lord Bolingbroke, vol. 3. Appendix P.

least in virtue of the general expression—*tout ce que l'Angleterre a jamais possédé de ce côté là* (which they assert to be wholly new, and which I think is really so, since our plenipotentiaries make no mention of it)—*may give us occasion to encroach at any time upon their dominions in Canada, I have answered, that since, according to the carte which came from the Plenipotentiaries, marked with the extent of what was thought our dominion, and returned by the French with what they judged the extent of their's, there was no very great difference, and that the parties who determine that difference, must be guided by the same carte. I thought the Article would admit of no dispute, in case it be either determined immediately by the Plenipotentiaries, or referred to commissioners. I take leave to add to your Lordship that these limitations are not otherwise advantageous or prejudicial to Great Britain than as we are better or worse with the native Indians, and that the whole is rather a matter of industry than dominion.*"*

It is manifest from this letter of Mr. Prior's, that the extreme pretensions of both Governments were marked upon the map referred to, and that when a commission came to be appointed, they could not seek for a boundary under the Treaty elsewhere than within the country lying between these lines. These letters have no meaning if it was intended to restore the whole country drained into the bay, to England. This would be the most extreme demand she could make, and these letters show that the actual cession fell far short of such a claim. Had there been no maps referred to, and letters written, the use of the word *restore* in the Treaty, must of itself have precluded the English from claiming more than she ever actually possessed. The correspondence shows that she was to have less; that some of her former possessions were not to be restored to her, and the words of the Treaty were to be interpreted by the lines upon the map.

I have no doubt whatever that the boundary of the Hudson's Bay territories marked upon De Lisle's map, which was

* Hardwicke's State Papers, vol. 2, p. 500. Appendix P.

first published about the period of these negotiations, correctly represents the line drawn by the French, upon the map referred to by Mr. Prior and the Marquis de Torcy, and it cannot for a moment be supposed that upon that map the English drew a line coming down to the forty-ninth parallel. It is not at all improbable that the British commissioners were, at the time they put forward the extreme claims of the Hudson's Bay Company, unaware of the limitations the respective Governments had put upon their claims to dominion over the basin of the bay, by lines drawn upon the map, which was intended to assist in a proper construction of the Tenth Article of the Treaty of Utrecht; otherwise the conduct of the British commissioners is inconsistent with good faith on the part of the Government they represented. Six years had elapsed. Bolingbroke had been driven into banishment. The men who had come into power upon the fall of Marlborough were displaced, and it is not at all improbable that they were ignorant of the limitation that the letters of De Torcy and Prior, and the map they refer to, put upon the demands, that otherwise might, with a little show of reason, be made under a literal construction of the Treaty.

The Hudson's Bay Company were called upon in July, 1750, to lay before the Lords of Trade and Plantations a description of the limits of the territories granted them by the Charter of 1670. Their knowledge of the geography of the regions they claimed, seemed to have improved since 1714. They enter into a more minute description of the country. They say that the Bay and Straits of Hudson "are now so well known that they stand in no need of any particular description than by the chart or map herewith delivered, and the limits or boundaries of the lands and countries lying round the same, comprised as your memorialists conceive in the said grant, are as follows: that is to say, all the lands lying on the east side or coast of the said bay, and extending from the bay eastward to the Atlantic Ocean and Davis' Strait, and the line hereafter mentioned, as the east and south-eastern boundaries

of the said Company's territories; and towards the north, all the lands that lie at the north end, or on the north side or coast of the said bay, and extending from the bay northwards to the utmost limits of the lands there towards the North Pole; but where or how these lands terminate is hitherto unknown. And towards the west, all the lands that lie on the west side or coast of the said bay, and extending from the said bay westward to the utmost limits of the said lands; but where or how these lands terminate to the westward is also unknown, though probably it will be found they terminate on the Great South Sea. And towards the south, all the lands that lie on the south end or south side of the coast of the said bay, the extent of which lands to the south to be limited and divided from the places appertaining to the French in those parts by a line from the island called Grimmington Island or Cape Perdrix, in the latitude of fifty-nine and a half degrees north, which they desire may be the boundary between the English and the French on the coast of Labrador," &c. The remainder of the description corresponds with the line set out in their proposal of the 4th of August, 1714.

This memorial shows that they did not regard their Charter as simply covering the territory drained by the rivers falling into the bay—as they claimed the territory to the North Pole and to the Pacific Ocean. They seem to have admitted the claims of the French to the southern part of the basin of Hudson's Bay; for they say with regard to the southern boundary, that "to avoid as much as possible any just grounds for differing with the French in agreeing on those boundaries which lie nearest their settlements, it is laid down so as to leave the French in possession of as much or more land than they can make any just pretension to; and at the same time leaves your memorialists but a very small district of land from the south end of the said bay necessary for a frontier." This line, as laid down on the maps of Mitchell and Bell, gave to France the country as far west as the longitude of the head waters of the Mississippi; and this

was the most extreme pretension put forward by the Company before the conquest of Canada, and the Treaty which confirmed it in 1763.

I have not deemed it necessary to detail the voyages and discoveries upon which the French founded their claims to the sovereignty of Hudson's Bay. A memoir of their rights will be found written by M de Denonville, and addressed to M. de Seignelay, from Quebec, on the 8th of November, 1686, at pages 303, 304, and 305, volume 9, of the *New York Historical Collection*. The French attempt at continuous occupation of the shores of the bay, dates from 1656, and the English occupation began eleven years later. The French holding, as they did, the interior country, carried on the fur trade with the northern Indians at Temiscaming, Alemipigon, and other posts, did not make any effort to establish themselves upon the shores of the bay. They no doubt felt that they could better protect the revenue derived from the licenses granted to the traders, by making the St. Lawrence the exclusive highway to Europe, than by permitting a portion of the trade to escape thither from Hudson's Bay.

There is no evidence that Hudson, or any of those who succeeded him, was commissioned to take possession of the country about Hudson's Bay, on behalf of the Crown of England. Nor is there any evidence that the English had any intention of seeking to acquire the territory before 1667. If they had any intention before that time to base a claim to the sovereignty of the country upon the voyages of Hudson, Fox, or Button, there would have been some mention made of it during the negotiations of the Treaty of St. Germain-en-Laye, in 1632, when Canada was restored to France, and the successes of Kirke were thrown away. But there is no allusion to any British possessions in the north, and that Treaty proves that in 1632 the English laid claim to no territory north of the St. Lawrence.*

* Blome's "Present State of His Majesty's Isles and Territories in North America," published in July, 1686, makes no mention of Hudson's Bay. It was for years only known as British territory to the Company, and to the Ministers to whom they complained of French aggressions.

It is not, however, necessary to determine the merits of the claims of the respective parties in order to arrive at a just conclusion as to the location of the northern boundary of Ontario. The Treaty of Utrecht gave to England the shores of the bay, and it is my purpose to state where I think the Treaty of Utrecht, and the subsequent acts of the Parliament and King of England placed it. During the negotiations of the Treaty of Utrecht, long discussions took place between the Plenipotentiaries of England and France as to the phraseology of the Treaty.* The French, in surrendering the bay and the adjacent territory, wanted to use the word *cede*, and the English insisted on the use of the word *restore*. The French were unwilling to admit that when they captured the English forts upon the shores of the bay, in time of profound peace, they had been capturing forts which were rightfully erected by British subjects upon British territory. The English seemed to have insisted upon the use of the word *restore*, to revive, if possible, the rights of the Hudson's Bay Company to the country which had for twenty years been in the possession of the French; and the letter of Lord Dartmouth to the Hudson's Bay Company shows very clearly that the transfer was to be made directly by France to the Company, and not to the Government of Great Britain; so that "by this means, the title of the Company is acknowledged, and they will come into the immediate enjoyment of their property without further trouble."†

From the signing of the Treaty of Utrecht to the signing of that of Paris, the Hudson's Bay Company built a few additional posts, but except Henley House, and a trading post in the direction of Temiscaming, none of these posts drew them away from the shores of the bay. Nor do I see upon what principle that any act of the Company could, at that time, have enlarged their possessions. The fur-traders, under the Government of Canada, had for half a century traversed

* Bolingbroke's Correspondence, vol. 3. Appendix P.

† Dartmouth to Lords of Trade, May 27th, 1714. Appendix O.

the country between the great lakes and the bay, westward to Lake Winnipeg, and when the French had gone from Quebec, from Mackinac, and from Nipigon, to Hudson's Bay, and captured the forts of the Company, which were subsequently recognized as rightfully belonging to them, it could scarcely be held that it was possible for the Company to extend their dominion over any part of the country east of Lake Winnipeg and Nelson's river, without encroaching upon Canada.

In 1718 the Company built a wooden fort upon the Churchill River, called The Prince of Wales Fort.*

In 1730 they built one fort upon the Moose River, and another small one on the East Maine.

In 1744 they built Henley House, 150 miles up the Albany river, so as to share the trade in a larger degree with the French, who had twenty-seven years earlier built a fort near the source of that river.†

They did not enter the Valley of the Saskatchewan until the end of the last century, nor that of the Red River until the beginning of this. I have stated in the first part of this report, that the Charter of the Hudson's Bay Company was not intended to confer a title to a country already possessed by the Crown. It was, as it professes to be, and as many

* Hearne says it was built in 1721.

† It seems the French had been in the habit of trading about Lake St. Joseph's and the Head Waters of the Albany river long before Lieutenant Noue was sent thither (1717) to establish a fort. In fact, he could not have been ordered to establish a fort at a lake near Lake Christinaux unless the country had been thoroughly explored before, and the propriety of making it the centre of a trade determined. M. de Denonville, in writing to M. Seignelay, August 25th, 1687, says : " Du L'Hut's brother, who has recently arrived from the rivers above Lake Alemmipigons, assures me that he saw more than 1,500 persons come to trade with him. They were very sorry that he had not sufficient goods to satisfy them. They are of the tribes accustomed to resort to the English of Port Nelson or River Bourbon, where they say they did not go through Sieur Du L'Hut's influence. It remains to be seen whether they speak the truth. The overland route to them is frightful, on account of its length, and of the difficulty of finding food. He says there is a multitude of people beyond these, and that no trade is to be expected except by sea, for the expense is too great."—N. Y. Historical Collection, vol. 9, p. 343.

earlier charters were, a commission from the King to make discoveries. It is true that the Company constituted by the Charter, were informed that the King expressly excepted from the grant the possessions of other Christian Princes. But the King could not convey what he did not have, and it cannot for a moment be maintained that either by actual possession or by discovery, any claim could at that time be set up to the country in the interior. If it be admitted that the King had the power to grant such a charter—and I am not here questioning his right to do so—it could not be held to convey more territory than was in his possession at the time, unless it subsequently became English territory by the enterprise of the company to whom the grant was prospectively made.* The Company, by the terms of their Charter, assuming it to have been valid, were the commissioned agents of the Crown for the purpose of extending the sovereignty of England in the region about Hudson's Bay. They made no effort under their Charter to extend the King's dominions. They, as time advanced, laid claim to more and more territory. This they did as the country became known to them through the explorations of the French.

The French, by the Treaty of Utrecht, surrendered the Bay and Straits of Hudson ; but they pushed on with all the more energy their explorations of the interior. They established trading posts in the country north of Lake Superior and Lake Nipigon, which had thirty years earlier been explored by Du L'Hut and others. It was in 1666 or 1667 that Radisson and Des Grosseliers crossed from Lake Superior to Hudson's Bay, and it is highly probable that they did what M. Denonville says—they went over a country that the French fur-traders had before explored.†

Thomas Jeffery, Geographer to the King of England, in his account of the French dominions in North America,

* Great doubt was expressed in the case of the Duke of York, as to whether a grant could be made valid by the subsequent acquisition of the country.

† M. Denonville to M. de Seignelay, Nov. 18, 1686.

marks the northern boundary of Canada as extending along the height of land between Lake Winnipeg and Hudson's Bay, crossing Nelson river at what is marked upon his map as Lake of the Forts, and upon more recent maps as Split Lake. He says that, "At the mouth of the Three Rivers (Kamenistiquia) is a little French fort called Camenistagonia,* and twenty-five leagues to the west of the said fort, the land begins to slope, and the river to run towards the West. At ninety-five leagues from the greatest height lies the second establishment of the French that way, called Fort St. Pierre, in the Lake Des Pluies. The third is Fort St. Charles, eighty leagues further on, on the Lake Des Bois. The fourth is Fort Maurepas, a hundred leagues distant from the last, near the head of the Lake Ouinipigon. Fort La Reine, which is the fifth, lies a hundred leagues further, on the river of the Assiniboils. Another fort had been built on the River Rouge, but was deserted, on account of its vicinity to the two last. The sixth, Fort Dauphin, stands on the west side of Lac Des Praries, or of the Meadows. The seventh, which is called Fort Bourbon, stands on the shore of the Great Lake Bourbon. The chain ends with Fort Poskoyac, at the bottom of a river of that name, which falls into Lake Bourbon. The River Poskoyac is made by De Lisle and Bauche to rise within twenty-five leagues of their west sea, which they say communicates with the Pacific Ocean. All these forts are under the Governor of Canada." †

These settlements of the French carry Canada beyond the watershed of the St. Lawrence, and if any one will examine into the claims of the respective parties, he can have little

* The design of building Fort Camanistigoyan, on Lake Superior: "'Tis some years since Mr. Dulhut built a fort upon this lake, where he had made large magazines of all sorts of goods. That fort was called Camanistigoyan, and did considerable disservice to the English settlements in Hudson's Bay."—La Hontan's *Memoirs of North America*, p. 214.

† Jeffery's *French Dominions in America*, p. 19; taken from *Remarks upon the Map of America*, by N. Bellin, Paris, 1755. See also the works of Henry Carver, and La Hontan.

doubt to whom the territory north-west of Lake Superior by right belonged.

The Charters granted to Sebastian Cabot, to Sir Humphrey Gilbert, to Sir Walter Raleigh, to the London Company, and to the Plymouth Company, show very clearly that the policy of the Crown was to extend by such agencies its dominion over North America. They embraced vast tracts of territory of which England was never able to claim the sovereignty. Such unlimited grants can only be understood in this sense, that the Crown did not wish to set limits to the extension of its dominions by the discoveries of its own subjects. Its possessions in the neighbourhood of Hudson's Bay, if it had any, were to be enlarged by the discoveries and settlements of the Company, it could not well set definite limits to the territories granted by the Charter, except such as were possessed by other British subjects, or by the subjects of other Christian States. It is, indeed, very doubtful whether such a grant would prevent future explorations and settlements by other British subjects beyond the country actually appropriated by the Company. Had it been possible for other subjects of the King of England to have gone to the head waters of the Nelson, the Albany, or the Severn rivers without entering the bay, and to have formed settlements there, which were not reached by the Company for half a century, who will hold that they would have been, from the beginning, trespassers upon the property of the Company? But whatever doubt might exist in the mind as to other British subjects, in such a case, there can be no doubt as to the rights of the subjects of a foreign prince. A right of sovereignty attends, as a necessary consequence, upon the establishment of a nation in an unsettled or barbarous country. A nation may so establish itself either by immigration in a body or by sending forth colonies; and when a nation so takes possession, the country becomes a part of the parent state.*

The right of dominion in a nation corresponds to the right

* Vattel's Law of Nations, book 1, sections 205-210.

of property in an individual. When a nation occupies a vacant country, it imports its sovereignty into the country. A nation differs from an individual in this—when an individual settles in a country in which he finds no previous owner, he cannot arrogate to himself an exclusive right to the country, or to its government, unless some sovereign authority has delegated to him power to do so.*

"The exclusive right," says Wheaton, "of every individual State to its territory and other property, is founded upon the title originally acquired by occupancy, and subsequently confirmed by the presumption arising from the lapse of time, and by treaties and other compacts with foreign States."†

To constitute a valid territorial title by occupation, the territory must be previously vacant, *and the State must intend to take and maintain possession.* The claims of European nations to possessions held by them in the New World discovered by Columbus and other adventurers, was originally derived from discovery, or conquest, or colonization.‡

When Mendoza, the Spanish Ambassador, remonstrated against the expedition of Drake, Queen Elizabeth replied : "That she did not understand why either her subjects or those of any other European Prince should be deprived of traffic in the Indies ; that as she did not acknowledge the Spaniards to have any title by the donation of the Bishop of Rome, so she knew no right that they had to any places other than those they were in actual possession of. For that their having touched only here and there upon a coast, and given names to a few rivers or capes, were such insignificant things as could in no wise entitle to a propriety, *further than in parts where they actually settled, and continued to inhabit.*"§

Elizabeth, in refusing to recognize the double Spanish title by exploration and investiture, put it out of the power of her

* Vattel's Law of Nations, book 2, section 96.

† Wheaton's International Law, chap. 4., sec. 161.

‡ Wheaton's International Law, chap. 4, section 165.

§ Camden's Annals, anno 1580 (edit Hearne, 1717), p. 360.

successors to found any claim upon the discoveries of Cabot, Hudson, Fox, and others who sailed into Hudson's Bay.

In 1824, Mr. Rush, in a letter to Mr. Adams, said that Great Britain "could never admit that the mere fact of Spanish navigators having first seen the coast at particular points, even where this was capable of being substantiated as a fact, *without any subsequent or efficient acts of sovereignty or settlement following on the part of Spain, was sufficient to exclude all other nations from that portion of the globe.*"*

The principle recognized and maintained by the United States is "that prior discovery gives the right to occupy, provided that occupancy takes place within reasonable time, and is followed by permanent settlement, and by the cultivation of the soil."†

In the discussion that took place between Russia and the United States in respect to the boundary upon the North-West coast of America, the Chevalier de Poletica, the Russian Minister at Washington, laid down the following doctrine as a basis upon which a Government may fairly claim the sovereignty of a country: "The title of *first discovery*, the title of *first occupation*, and in the last place, the *peaceable and uncontested possession* for more than half-a-century."‡

The same doctrine was stated in 1826 by the British Commissioners, Messrs. Huskisson and Addington, for the settlement of the boundary between the United States and British America. They say: "Upon the question how far prior discovery constitutes a legal claim to sovereignty, the law of nations is somewhat vague and indefinite. It is, however, admitted by the most approved writers that *mere accidental discovery, or receiving the sovereignty from the natives, constitutes the lowest degree of title.*"§

"Soon after," says C. J. Marshall, "Great Britain deter-

* State Papers 1825-1826, p. 512.

† Mr. Gallatin, in Appendix to Greenhow's Oregon Boundary; also Twiss' Oregon Question, p. 105.

‡ British and Foreign State Papers, 1821-2, p. 485.

§ London Conference, Dec. 16, 1826.

mined on planting colonies in America, the King granted charters to companies of his subjects who associated *for the purpose of carrying the views of the Crown into effect*, and of enriching themselves. The first of these charters was made *before possession was taken of any part of the country*; they purport generally to convey the soil from the Atlantic to the South Sea. This soil was occupied by numerous and warlike nations, equally willing and able to defend their possessions. The extravagant and absurd idea that the feeble settlements made on the sea coast, or the companies under whom they were made, acquired legitimate power by them to govern the people, or occupy the lands from sea to sea, did not enter the mind of any man. They were well understood to convey the title, which, according to the common law of European sovereigns respecting America, they might rightfully convey, and no more. This was the exclusive right of purchasing such lands as the natives were willing to sell. *The Crown could not be understood to grant what the Crown did not affect to claim, nor was it so understood.*"*

It will hardly be contended by the Government of Canada, that, because the Hudson's Bay Company had established certain posts and forts at the mouth of some of the rivers that empty into the bay, that this gave to the Company, or to the Crown of Great Britain the right to all the countries through which rivers flow to the bay. A pretension of this kind was put forward by the United States, for the purpose of establishing a claim to the entire valley of the Columbia river and its tributaries, and it was at the time expressly repudiated by Great Britain.

It is a principle as well settled as any in international law, that rivers are no more than appendages of the countries through which they run, and a settlement upon the coast

* *Worcester v. The State of Georgia*, 6 Peter's R. *Note*.—Gilbert's patent, made the 11th of June, 1578, authorized him to *discover* and *occupy* any remote, heathen, or barbarous lands not actually possessed of any Christian prince or people.—*Hazard's Hist. Col.*, vol. 1., p.p. 24-28.

gives possession to the country in the rear, only so far as it bars the approach to the interior of the country.*

By the Tenth Article of the Treaty of Utrecht, the French *restored* to the English, "Hudson's Straits and Bay, and all the lands, seas, sea-coasts, rivers and places situated in the said Bay and Straits, and which belong thereunto, no tracts of land or sea being excepted which are at present *possessed by the subjects of France*."

It is true, that, was it not for the use of the word *restore* in the Treaty, the expressions employed are very comprehensive; but this one word limits all general words of description to what was once in the actual possession of England. If this were not the case, there would have been no propriety in inserting the additional terms for the cession of tracts of land in the possession of French subjects.†

Had the word *cession* been used instead of *restoration*, the terms all lands, seas, sea-coasts, etc., would certainly have been broad enough to have conveyed the entire coasts of the bay; but it would seem that, for the purpose of maintaining that Charles the Second had the right to make a grant of some part of the coast, and in this way to give color to the claims of the Company, the word *restoration* was insisted on, and,

* See correspondence between the Governments of England and the United States, relative to the Oregon boundary, and the discovery of the Columbia River.—State Papers, 1845-6.

† Hudson's Bay, which was one of Canada's most lucrative establishments, has been ceded to the English by the Treaty of Utrecht, under the denomination or title of restitution. They carry on a profitable trade there; but the excessive cold, and difficulty of subsistence, will never permit them to form establishments there capable of affording any uneasiness to Canada—and if the strength of the latter country be augmented, as proposed, 'twill possibly be in a condition in the first war to wrest Hudson's Bay from the English.

The Treaty of Utrecht had provided for the appointment of commissioners to regulate the boundaries of Hudson's Bay; but nothing has been done in that matter. The term "restitution" which has been used in the Treaty, conveys the idea clearly that the English can claim only what they have possessed, and as they never had but a few establishments on the sea-coast, 'tis evident that the interior of the country is considered as belonging to France.—Memoir on the French Colonies in North America, by M. de la Gallisseioniere, Paris, Doc. 10.—N. Y. Hist. Col., vol. 10, p. 225.

therefore, further words of conveyance became necessary to put England in possession of the entire coast.

This fact must not be overlooked, that while France consented by this Article of the Treaty to transfer to England possessions which had not been hers before ; she at the same time refused to agree to it in its present form until the English Government made known the extent of country they claimed, because she was resolved not to surrender all that might, otherwise, be demanded. The letters of the Marquis de Torcy and Mr. Prior establish beyond question that the restoration referred to was greatly restricted by the lines drawn upon the map, which must be regarded as a necessary part of the Treaty. The French Government had, as Mr. Prior admits, expressed their fears that a large extent of country would be demanded from them under the Treaty. They remembered the former pretensions of England, and it was to prevent the possibility of her insisting upon being put in possession of all she had ever claimed, that a map was brought into requisition, and lines drawn by the plenipotentiaries of the two governments, showing beforehand how each party to the Treaty understood it. They were drawn to construe the Treaty, not in the interest of England, but in the interest of France, and in order that she might be protected against a demand for as much territory as the Treaty would, otherwise, seem to entitle England to claim.

It is true that Fortifications and Military Posts are sometimes expressly mentioned as having been *ceded* or *restored*, when there has already been a stipulation for the transfer of the entire country in which they are situated ;* and had the Treaty only mentioned the Posts and Forts in the possession of the French, in addition to the general words of restoration, it might have been very properly argued that they were within the territory to be restored ; but the words of the

* See the Discussion Between the Governments of England and France, on the Limits of Nova Scotia, as to the effect of mentioning the cession of certain forts, as well as "*all Acadia*."—Her Majesty's Rights in Acadie, 1756.

Treaty show that however comprehensive the terms of restoration might be, the English did not think them alone sufficient to secure the transfer of the entire coasts of Hudson's Strait and Bay.

I have already quoted the Articles of the Treaty of Ryswick, by which it was stipulated that all Places and Forts established on the shores of Hudson's and James' bays by the Hudson's Bay Company, became the property of France.

I am of opinion that these stipulations extinguished whatever rights the Company had by their Charter, and that they were not revived by a retrocession of the country to Great Britain by the Treaty of Utrecht.

As a general rule, when a Government comes into possession of property which belonged to its subjects, and which had been captured by an enemy, it restores the property to the original owners. So far as it can, it puts them upon the same footing as that in which they stood before the capture.* It is, too, the rule and the practice for the conqueror to respect the right to private property in the soil when a country is conquered. But to both these rules there are important exceptions. "Where a territory," says Halleck, "has been acquired by conquest, and confirmed to the conqueror by a Treaty of Peace, the right or title of the new sovereign is not that of the original possessor, and therefore is not subject to the same limitation or restriction. It originated in force, and dates back to the conquest. A subsequent restoration of such territory to its former sovereign is regarded in law as a retrocession, and carries with it no right of postliminy. When the inhabitants of such conquered territory become a part of the new State, they must bear the consequence of the transfer of their allegiance to a new sovereign; he is in turn to be regarded as a conqueror, and they cannot claim, as against him, any rights of postliminy. The correctness of the principle of international law is never disputed."†

* Vattel, book 3, section 205.

† Halleck's International Law, chapter 35, section 9.

Vattel might seem to a careless reader to lay down a different doctrine, but when carefully examined, it will be found to be substantially the same. He says: "Provinces, towns, and lands which the enemy *restores* by the Treaty of Peace are certainly *entitled to the right of postliminium*; for the sovereign, in whatever manner he recovers them, is bound to *restore them* to their former condition as soon as he regains possession of them (§205). The enemy in giving back the town at the peace, renounces the right he had acquired by arms. It is just the same as if he had never taken it, and the transaction furnishes no reason which can justify the sovereign in refusing to reinstate such town in the possession of all her rights, and restore her to her former condition. But whatever is *ceded* to the enemy by a Treaty of Peace is truly and completely alienated. It has no longer any claim to the right of postliminium unless the Treaty of Peace be broken and cancelled."* The *restoration* here spoken of is not a retrocession of territory, the title to which has already been vested in the conqueror, but the restoration of territory at the peace immediately following the war in which the conquest was made; and in that event the adverse possession is regarded rather as a *belligerent occupation* than a *conquest*.†

The Hudson's Bay Company were not simply private owners of a great estate, endowed by their Charter with limited powers of Government. They built forts, and armed them. Their valuable property in the vicinity of Hudson's Bay was such as belongs to a State rather than to a citizen. Had their forts and posts been re-captured during the war preceding the Treaty of Ryswick, and left to the English by the Treaty, it would have been the duty of the Government to have placed the Company in the position they stood before

* Vattel's Law of Nations, book 3, sections 214 and 215.

† 3 Washington C. C. Rep. 101; 8 Wheaton's R. 591; 12 Peter's R. 410; Halleck's Int. Law 840, 841; 2 Dallas R. 1; 1 Cowp. R. 165 and 205; 2 East R. 260; 4 Mod. R. 225. Conquest does not *per se* give the conqueror *plenum dominium et utile*, but a temporary right of possession and government.—2 Gallis. R. 486.

the capture.* But this rule does not apply where the rights of the original owners have been once extinguished.† The Hudson's Bay Company were not recognized by France as ordinary proprietors of the soil, who continued in possession of their lands under a change of sovereignty. They were regarded as a great public corporation, acting on behalf of their Government, whose rights must stand or fall with the authority of the Government which created them a corporation. This may be taken as the Common Law of the European States that were seeking to establish their authority upon this continent. Their conduct and policy, during the seventeenth and eighteenth centuries, show conclusively that companies such as this one were looked upon as great political corporations, whose rights and franchises were created mainly to extend the power and authority of the sovereign who chartered them, and that they had, therefore, no rights as private owners which a foreign state was, in case of conquest, bound to respect. They were looked upon as the custodians of political power rather than as private citizens, and were dealt with accordingly. It was in this way that the English dealt with the Quebec Company, and the Treaty of Utrecht recognizes the principle in express terms.

The case of the Duke of York, under the charters granted to him, well illustrates the principle. On the 12th of March, 1664, O.S., the King granted, by Royal patent, to his brother James, Duke of York and Albany, all the lands and rivers from the west side of the Connecticut river to the east side of Delaware bay. His patent also embraced Long Island and the islands in the neighbourhood. These had before been granted to Lord Stirling, but he had released his title before the grant was made to James. This patent conveyed a part of Connecticut and the whole of New Netherlands. James was at the time Lord High Admiral. He took four ships of war to give effect to his patent, and to put himself in possession of his new

* Vattel's Law of Nations, book 3, section 205.

† Halleck's Int. Law, 840, 1, 2. Phillimore's Int. Law, vol. 3, p.p. 568-572.

estate. These were put under the command of Colonel Nicolls, who had associated with him Sir R. Carr, Colonel G. Carteret, and Samuel Moverick (who was a commissioner to the New England colonies), requiring them to assist in the conquest of the country granted to the Duke. On the 20th of October, N. S., the conquest of New Netherlands was completed, and James went into possession. Three years later the sovereignty of the country was confirmed to England by treaty. In 1773, war again broke out between England and the United Provinces, and the country was re-conquered by the Dutch. By the Sixth Article of the Treaty of Westminster, which was ratified on the $\frac{9}{15}$ of February, 167 $\frac{1}{2}$, the United Provinces relinquished their conquest of new Netherlands to the King of England.

It was claimed that James' former proprietorship in America revived by the restoration of the Province to the King of England, especially as the Treaty of Westminster re-established the Articles of Capitulation between Nicolls and Stuyvesant, in 1664. The Treaty of Breda confirmed the conquest to England upon the principle of *uti possidetis*.

There were two grounds upon which the validity of the Charter was questioned by eminent lawyers—the one that the country was in the possession of the Dutch when the Patent was made ; the other, that the conquest of the Dutch extinguished the title, if good before. The opinion of counsel having been taken, they advised that “ the Duke's rights had been extinguished by the Dutch conquest, and that the King alone was now seized of New Netherlands, by virtue of the Treaty of Westminster. The *jus postliminii* did not obtain where there had been a complete change of sovereignty.” A new Patent was accordingly issued on the 29th of June, 1674.* † It may not be always easy to say whether there

* Broadhead's History of New York, vol. 2, ch. 5, 6 ; 1 Kent's Commentaries, p.p. 108-111 ; 2 Douglass, p.p. 224-268.

† The colony of Pemaquid was conquered by D'Iberville in 1689. It was restored to the English by the Treaty of Ryswick, but they did not obtain possession, it seems,

has been a suspension or an extinguishment of a right by conquest and restoration. The principle recognized in this case seems to have been this—that where there has been not only belligerent occupation, but the establishment of civil authority, and the people have been so far reconciled to their new masters as voluntarily to recognize their authority, there

before the war of 1702. It was re-conquered by General Nicholson, and the law officers of the Crown were consulted as to whether the right to the lands was in the Crown, or whether the Charter granted before the conquest, was still in force. They answered: “As to the question stated in the Case, upon the effect of the conquest of this tract of country by the French, and the re-conquest thereof by General Nicholson, we conceive that the said tract, not having been yielded by the Crown of England to France by any treaty, the conquest thereof by the French created, according to the law of nations, only a suspension of the property of the former owners, and not an extinguishment of it; and that upon the re-conquest by General Nicholson, all the ancient right, both of the Province and of private persons subjects of the Crown of Great Britain, did revive, and were restored *jure postliminii*. The rule holds the more strongly, in the present case, in regard it appears by the affidavits that the Province joined their forces to those which came thither under the command of General Nicholson, in this service. . . .”

P. YORKE.

Aug. 11, 1731.

C. TALBOT.

“A long possession, accompanied with an equitable government, may legitimate a conquest, in its beginning and principle the most unjust. There are modern civilians who explain the thing somewhat differently. These maintain that in a just war the victor acquires the full right of sovereignty over the vanquished, by the single title of conquest, independently of any convention; and even though the victor has otherwise obtained all the satisfaction and indemnification he could require.

“The principal argument these writers make use of is, that otherwise the conqueror could not be certain of the peaceable possession of what he has taken, or forced the conqueror to give him for his just pretensions, since they might retake it from him by the same right of war.

“But this reason proves only that the conqueror who has taken possession of an enemy's country, may command in it while he holds it, and not resign it till he has good security that he shall obtain or possess, without hazard, what is necessary for the satisfaction and indemnity which he has a right to exact by force. But the end of a just war does not always demand that the conqueror should acquire an absolute and perpetual right of sovereignty over the conquered. *It is only a favourable occasion of obtaining it; and for that purpose there must always be an express or tacit consent of the vanquished.** Otherwise, the state of war still subsisting, the sovereignty of the conqueror has no other title than that of force, and lasts no longer than the vanquished are unable to throw off the yoke.”—Burlamaqui's *Politique* Law, part 4, chap. 8, sections 8, 9, and 10.

* The consent of the conquered in New York, and the want of it in Pemaquid, may explain the difference of the rule in the two cases. New York was restored after the war; Pemaquid was retaken during the war.

is in law, as well as in fact, a change of sovereignty.* *But there can be no doubt that the right of postliminy does not obtain where a recognized change of sovereignty has intervened between the conquest and the restoration.*

It is worthy of note that the Duke of York, upon the authority of his first patent, conveyed that portion of his grant lying between the Hudson and Delaware rivers, to Lord Berkeley and Sir George Carteret, and which was named New Jersey as a compliment to Sir George, who had been Governor of the Island of Jersey during the Civil War, and held it for the King. Berkeley sold his rights to Edward Billinge. Billinge, who was greatly in debt, consented to sell his part for the benefit of his creditors, and William Penn, Gawen Lawrie, and Nicholas Lucas, were appointed trustees for the purpose. In 1676 they divided the territory with Sir George Carteret, he taking the eastern and they the western portion.

This country fell into the hands of the Dutch at the time they retook New York, and it was by the Treaty of Westminster restored to England, but the titles of the settlers, which were derived through the Duke of York from the first Patent granted by the King, were unquestioned. Unlike that of James, they were unaffected by the conquest.†

* In the case of the colony at Pemaquid, they assisted in the expulsion of the French. Pfeiffer says there can never be a change of sovereignty so long as the war continues during which the conquest was made; but a different principle was recognised when the Dutch retook New York—for the peace which followed the conquest, gave back the territory to England. A belligerent who has not succeeded to the sovereignty of a country which he holds by military force, has no right to play the part of a public creditor to the country held by military duress, nor can the country subsequently be held responsible for what he may do. But where there has been a change of sovereignty, the rule is different. In the case of Murat, who drove Ferdinand IV., King of the two Sicilies, from one-half his dominions, and committed outrages upon American shipping and commerce, the Government of the United States held Ferdinand responsible upon his restoration, *on the ground that Murat was King with the consent of those whom he governed, and was, therefore, not an enemy holding the country against the consent of the nation.* Ferdinand must in that case be regarded as his successor.—See Note 169 to the 8th Edition of Wheaton, by R. H. Dana.

† See the opinions of Sir William Jones and Sir Clement Wearg in the New Jersey Historical Collection.

Whatever may be thought of the intentions of Bolingbroke and Dartmouth towards the Hudson's Bay Company, there cannot be much doubt that those who succeeded them, recognized the legal effect of the Treaty of Ryswick upon the claims of the Company. In their instructions to the English commissioners at Paris for settling the boundary between Canada and the territory restored to England about the bay, they direct them "to take special care in wording such Articles as shall be agreed upon with the Commissioners of His Most Christian Majesty upon this head—that *the said boundaries be understood to regard the trade of the Hudson's Bay Company only.*"

The Government, it would seem, were prepared to restore to the Company a right to trade with the Indians, but were not disposed to recognize in the Company any powers of government, or any property in the soil. When the King, by an Order in Council, in August, 1791, divided Quebec into Upper and Lower Canada, and extended the separating line "northward to the boundary of Hudson's Bay," he did not recognize in the Company any rights of property or of government which this extension could take away. So, too, when that portion of Lower Canada which lay between the River St. John and the Atlantic Ocean, was severed from Lower Canada, in 1809, and re-annexed to Newfoundland, it embraced the country northward to Hudson's Straits, which did, beyond question, annex to Newfoundland part of the country covered by the Charter of the Company.* The action of the King in the one case, and Parliament in the other, would seem to show that they did not regard the pretensions of the Hudson's Bay Company as presenting any obstacle to the extension of the Provinces upon the south to the shores of the straits and the bay.

We have seen that the French posts, forts, and settlements extended beyond the water-shed of the St. Lawrence to the head water of the Albany river, to the Saskatchewan,

* See 49 Geo. 3, c. 27, sec. 14.

and to Lake Winnipeg. If the map referred to by Prior and the Marquis De Torcy as the one used by the plenipotentiaries in 1713, and the one mentioned by M. de Mofras, which was used by Bedford and De Choiseul in 1763, cannot be found, still I apprehend a boundary may be laid down in conformity with the Treaty of Utrecht and the Order in Council of the 19th of August, 1791, by a line drawn midway between the English posts upon the shores of the bay on the one side, and the French posts upon the head waters of the Albany river and Lake Winnipeg upon the other, which line will fix the western limit of the territory restored by France under the Treaty of Utrecht. In my opinion, the territory about James' bay to the south of the Albany river was made a part of Upper Canada by the Order in Council referred to, if it was not so before.

The United States, in their discussions with Spain respecting the western boundary of Louisiana, mentions, in a case like this, the middle distance between two nations' colonies as the proper location of the boundary,* and Vattel lays down the same rule.† It is in accordance with the facts here set forth that the principle is to be applied. A letter from the Governor of Canada to Count de Maurepas shows that the French had several posts about Lake Nipigon in 1744.‡ The

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* British and Foreign State Papers, 1817-18, p. 328.

† Vattel, book 2, sec. 95.


‡ M. de Beauharnois to Count de Maurepas.—“In regard to the posts on Hudson's Bay, and those they have established on this side in the direction of Temiscaming, and which His Majesty has been pleased to recommend me to endeavour to neutralize or to utterly destroy, if possible; I have accordingly instructed Sieur Guillet, who farms the Post of Temiscaming, and has gained the good opinion and confidence of all the nations thereabouts to prevail on them to assemble together in the course of this winter in order to fall, at the opening of the spring, as well on Fort Rupert as on the other posts in the direction of Hudson's Bay; I have in like manner, on receiving news of the war, sent orders to Michilimackinac, to be transmitted to Alepimigon and the other posts in that neighbourhood, so that they may all co-operate in the destruction of the English establishments at the north, and among the rest, of that newly built, about twenty leagues above Michipicoton, by a Canadian refugee, who has conducted thither seven or eight Englishmen who trade there; and I have ordered not only the forcible destruction of that establishment, but also that the Canadian be

Treaty of Utrecht itself, and the remonstrances of the Hudson's Bay Company, bear testimony to the fact that the Quebec Company and other French fur-traders occupied the country from the St. Lawrence and the Great Lakes to the shores of Hudson's Bay. I know of no principle applicable to the case, whether of settlement or of discovery, upon which the Hudson's Bay Company could, after 1713, extend their dominion beyond the line marked upon the map of the plenipotentiaries, even admitting their chartered rights to have been unimpaired by the conquest and the Treaty of Ryswick.

What I have so far written is sufficient to show that if it is admitted that England formed the first settlements upon the bay, they would not, by any established rule of public law, give her a right to the entire basin; that this could only be claimed by a country which possessed both the entire shore, and the only means of access to the interior; that the possession of the mouth of a river does not draw with it the entire country drained by the river; on the contrary, it is the possession of the country that draws along with it the possession of the rivers; that the Treaty of Utrecht circumscribed the possessions *restored* to England about the Bay within very narrow limits, when compared with the modern pretensions of the Company—limits which must have fallen far short of the sources of all the great rivers that disembogue their waters into Hudson's Bay; and that the Order in Council of 1791, by which Quebec was divided into two Provinces, included, in Upper Canada, that section of the country which was restored to Great Britain in

killed if it be impossible to seize him. I have also given Sr. Guillet notice that I should, at the very opening of spring despatch a party of Frenchmen and Indians, under the command of an officer and some others, so as to make a simultaneous attack on these posts. Sr. Guillet is to warn these Indians of this expedition, in order that they may hold themselves in readiness to join it, and, in fact, I calculate on sending it thither as soon as the season will permit, and I beg you, my Lord, to assure his Majesty that I will not neglect anything to utterly destroy, if possible, the English establishments in that quarter, as well as all those the difficulties whereof I shall be able to surmount.—8th October, 1744.”—Paris Doc. 8.—N. Y. Hist. Col., vol. 9, p. 1,105.

“Have not been able to make the attack, on account of the want in the King's stores.—June, 1745.”—Paris Doc. 9.—N. Y. Hist. Col., vol. 10, p. 2.



1713, which lies about the south-western part of James' Bay. This extension to the boundary of Hudson's Bay, instead of stopping at the line of the Treaty of Utrecht upon the south, and following it, would seem to point to the establishment of the Albany river, or the 53rd parallel of north latitude, westward to the limitary line under the Treaty, as a contemplated boundary. I am not aware that any such limitary line was ever formally established. But the facts here recounted prove that the most restricted limits which can be given to Ontario on the north, is to run due west from James' Bay to the international boundary of 1713,* thence in a north-westerly direction to the Split Lake, in Nelson's river, thence south-westerly along Nelson's river towards Lake Winnipeg, and thence westerly to the north of the Saskatchewan as far as the junction of the north and south branches of that river, meeting near that point the western limit of Quebec under the Act of 1774.

I would earnestly recommend the Government to obtain tracings of the maps used by the English and French plenipotentiaries in 1713 and in 1763, and of those sent at different times by the Hudson's Bay Company to the Lords of Trade and Plantations. I would also recommend them to obtain copies of all correspondence between the Governments of England and France upon the subject; a copy of the instructions given to the English commissioners appointed under both the Treaty of Ryswick and the Treaty of Utrecht, together with any reports which they may have made. These maps and papers, when obtained, will, in my opinion, be found to sustain the views expressed in this report as to the extent of territory the Government of Ontario may fairly claim as being within the limits of the Province.

* That is the boundary marked upon the map referred to by Mr. Prior.

APPENDIX.

APPENDIX A.

THE ROYAL CHARTER for incorporating the HUDSON'S BAY COMPANY, granted by his Majesty King CHARLES the Second, in the 22nd year of his reign, A.D. 1670.

CHARLES THE SECOND, by the grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith, &c., To ALL to whom these presents shall come, greeting : WHEREAS our dear and entirely beloved Cousin, Prince Rupert, Count Palatine of the Rhine, Duke of Bavaria and Cumberland, &c. ; Christopher Duke of Albemarle, William Earl of Craven, Henry Lord Arlington, Anthony Lord Ashley, Sir John Robinson, and Sir Robert Vyner, Knights and Baronets ; Sir Peter Colleton, Baronet ; Sir Edward Hungerford, Knight of the Bath ; Sir Paul Neele, Knight ; Sir John Griffith and Sir Philip Carteret, Knights ; James Hayes, John Kirke, Francis Millington, William Prettyman, John Fenn, Esquires ; and John Portman, Citizen and Goldsmith of London : have, at their own great cost and charges, undertaken an expedition for Hudson's Bay, in the north-west part of America, for the discovery of a new passage into the South Sea, and for the finding some trade for furs, minerals, and other considerable commodities, and by such their undertaking have already made such discoveries as to encourage them to proceed further in pursuance of their said design, by means whereof there may probably arise very great advantage to us and our kingdom : AND WHEREAS the said Under-

takers, for their further encouragement in the said design, have humbly besought us to incorporate them, and grant unto them and their successors the sole trade and commerce of all those seas, straits, bays, rivers, lakes, creeks and sounds, in whatsoever latitude they shall be, that lie within the entrance of the straits, commonly called Hudson's Straits, together with all the lands, countries and territories upon the coasts and confines of the seas, straits, bays, lakes, rivers, creeks and sounds aforesaid, which are not now actually possessed by any of our subjects, or by the subjects of any other Christian Prince or State : NOW KNOW YE, that we, being desirous to promote all endeavours tending to the public good of our people, and to encourage the said undertaking, HAVE, of our especial grace, certain knowledge, and mere motion, given, granted, ratified and confirmed, and by these presents, for us, our heirs and successors, DO give, grant, ratify and confirm, unto our said Cousin, Prince Rupert, Christopher Duke of Albemarle, William Earl of Craven, Henry Lord Arlington, Anthony Lord Ashley, Sir John Robinson, Sir Robert Vyner, Sir Peter Colleton, Sir Edward Hungerford, Sir Paul Neele, Sir John Griffith and Sir Philip Carteret, James Hayes, John Kirke, Francis Millington, William Prettyman, John Fenn, and John Portman, that they, and such others as shall be admitted into the said society as is hereafter expressed, shall be one body corporate and politic, in deed and in name, by the name of "The Governor and Company of Adventurers of England trading into Hudson's Bay," and them by the name of "The Governor and Company of Adventurers of England trading into Hudson's Bay," one body corporate and politic, in deed and in name, really and fully for ever, for us, our heirs and successors, WE DO make, ordain, constitute, establish, confirm and declare by these presents, and that by the same name of Governor and Company of Adventurers of England trading into Hudson's Bay, they shall have perpetual succession, and that they and their successors, by the name of "The Governor and Company of Adventurers of England trading

into Hudson's Bay," be, and at all times hereafter shall be personable and capable in law to have, purchase, receive, possess, enjoy and retain lands, rents, privileges, liberties, jurisdictions, franchises and hereditaments, of what kind, nature or quality soever they be, to them and their successors ; and also to give, grant, demise, alien, assign and dispose lands, tenements and hereditaments, and to do and execute all and singular other things by the same name that to them shall or may appertain to do ; and that they and their successors, by the name of "The Governor and Company of Adventurers of England trading into Hudson's Bay," may plead and be impleaded, answer and be answered, defend and be defended, in whatsoever courts and places, before whatsoever judges and justices, and other persons and officers, in all and singular actions, pleas, suits, quarrels, causes and demands whatsoever, of whatsoever kind, nature or sort, in such manner and form as any other our liege people of this our realm of England being persons able and capable in law, may or can have, purchase, receive, possess, enjoy, retain, give, grant, demise, alien, assign, dispose, plead, defend and be defended, do, permit and execute ; and that the said Governor and Company of Adventurers of England trading into Hudson's Bay, and their successors, may have a common seal to serve for all the causes and businesses of them and their successors, and that it shall and may be lawful to the said Governor and Company, and their successors, the same seal, from time to time, at their will and pleasure, to break, change and to make anew or alter, as to them shall seem expedient : AND FURTHER WE WILL, and by these presents, for us, our heirs and successors, WE DO ordain, that there shall be from henceforth one of the same Company to be elected and appointed in such form as hereafter in these presents is expressed, which shall be called the Governor of the said Company ; and that the said Governor and Company shall or may select seven of their number, in such form, as hereafter in these presents is expressed, which shall be called the Committee of the said Company, which

Committee of seven, or any three of them, together with the Governor or Deputy-Governor of the said Company for the time being, shall have the direction of the voyages of and for the said Company, and the provision of the shipping and merchandizes thereunto belonging, and also the sale of all merchandizes, goods and other things returned, in all or any the voyages or ships of or for the said Company, and the managing and handling of all other business, affairs and things belonging to the said Company : AND WE WILL, ordain and grant by these presents, for us, our heirs and successors, unto the said Governor and Company, and their successors, that they the said Governor and Company, and their successors, shall from henceforth for ever be ruled, ordered and governed according to such manner and form as is hereafter in these presents expressed, and not otherwise ; and that they shall have, hold, retain and enjoy the grants, liberties, privileges, jurisdictions and immunities only hereafter in these presents granted and expressed, and no other : And for the better execution of our will and grant in this behalf, WE HAVE ASSIGNED, nominated, constituted and made, and by these presents, for us, our heirs and successors, WE DO ASSIGN, nominate, constitute and make our said Cousin, PRINCE RUPERT, to be the first and present Governor of the said Company, and to continue in the said office from the date of these presents until the 10th November then next following, if he, the said Prince Rupert, shall so long live, and so until a new Governor be chosen by the said Company in form hereafter expressed : AND ALSO WE HAVE assigned, nominated and appointed, and by these presents, for us, our heirs and successors, WE DO assign, nominate and constitute, the said Sir John Robinson, Sir Robert Vyner, Sir Peter Colleton, James Hayes, John Kirke, Francis Millington and John Portman to be the seven first and present Committees of the said Company, from the date of these presents until the said 10th day of November then also next following, and so until new Committees shall be chosen in form hereafter expressed : AND FURTHER

WE WILL and grant by these presents, for us, our heirs and successors, unto the said Governor and Company, and their successors, that it shall and may be lawful to and for the said Governor and Company for the time being, or the greater part of them present at any public assembly, commonly called the Court General, to be holden for the said Company, the Governor of the said Company being always one, from time to time to elect, nominate and appoint one of the said Company to be Deputy to the said Governor, which Deputy shall take a corporal oath, before the Governor and three or more of the Committee of the said Company for the time being, well, truly and faithfully to execute his said office of Deputy to the Governor of the said Company, and after his oath so taken, shall and may from time to time, in the absence of the said Governor, exercise and execute the office of Governor of the said Company, in such sort as the said Governor ought to do : AND FURTHER WE WILL and grant by these presents, for us, our heirs and successors, unto the said Governor and Company of Adventurers of England trading into Hudson's Bay, and their successors, that they, or the greater part of them, whereof the Governor for the time being or his Deputy to be one, from time to time, and at all times hereafter, shall and may have authority and power, yearly and every year, between the first and last day of November, to assemble and meet together in some convenient place, to be appointed from time to time by the Governor, or in his absence by the Deputy of the said Governor for the time being, and that they being so assembled, it shall and may be lawful to and for the said Governor or Deputy of the said Governor, and the said Company for the time being, or the greater part of them which then shall happen to be present, whereof the Governor of the said Company or his Deputy for the time being to be one, to elect and nominate one of the said Company, which shall be Governor of the said Company for one whole year then next following, which person being so elected and nominated to be Governor of the said Company, as is aforesaid, before he be

admitted to the execution of the said office, shall take a corporal oath before the last Governor, being his predecessor or his Deputy, and any three or more of the Committee of the said Company for the time being, that he shall from time to time well and truly execute the office of Governor of the said Company in all things concerning the same ; and that immediately after the same oath so taken, he shall and may execute and use the said office of Governor of the said Company for one whole year from thence next following : And in like sort we will and grant that as well every one of the above-named to be of the said Company or Fellowship, as all others hereafter to be admitted or free of the said Company, shall take a corporal oath before the Governor of the said Company or his Deputy for the time being to such effect as by the said Governor and Company or the greater part of them in any public court to be held for the said Company, shall be in reasonable and legal manner set down and devised, before they shall be allowed or admitted to trade or traffic as a freeman of the said Company : AND FURTHER WE WILL and grant by these presents, for us, our heirs and successors, unto the said Governor and Company, and their successors, that the said Governor or Deputy Governor, and the rest of the said Company, and their successors for the time being, or the greater part of them, whereof the Governor or Deputy Governor from time to time to be one, shall and may from time to time, and at all times hereafter, have power and authority, yearly and every year, between the first and last day of November, to assemble and meet together in some convenient place, from time to time to be appointed by the said Governor of the said Company, or in his absence by his Deputy ; and that they being so assembled, it shall and may be lawful to and for the said Governor or his Deputy, and the Company for the time being, or the greater part of them which then shall happen to be present, whereof the Governor of the said Company or his Deputy for the time being to be one, to elect and nominate seven of the said Company, which shall be a Committee of

the said Company for one whole year from then next ensuing, which persons being so elected and nominated to be a Committee of the said Company as aforesaid, before they be admitted to the execution of their office, shall take a corporal oath before the Governor or his Deputy, and any three or more of the said Committee of the said Company, being their last predecessors, that they and every of them shall well and faithfully perform their said office of Committees in all things concerning the same, and that immediately after the said oath so taken, they shall and may execute and use their said office of Committees of the said Company for one whole year from thence next following : AND MOREOVER, our will and pleasure is, and by these presents, for us, our heirs and successors, WE DO GRANT unto the said Governor and Company, and their successors, that when and as often as it shall happen, the Governor or Deputy Governor of the said Company for the time being, at any time within one year after that he shall be nominated, elected and sworn to the office of the Governor of the said Company, as is aforesaid, to die or to be removed from the said office, which Governor or Deputy Governor not demeaning himself well in his said office, WE WILL to be removable at the pleasure of the rest of the said Company, or the greater part of them which shall be present at their public assemblies, commonly called their General Courts, holden for the said Company, that then and so often it shall and may be lawful to and for the residue of the said Company for the time being, or the greater part of them, within a convenient time after the death or removing of any such Governor or Deputy Governor, to assemble themselves in such convenient place as they shall think fit, for the election of the Governor or Deputy Governor of the said Company ; and that the said Company, or the greater part of them, being then and there present, shall and may, then and there, before their departure from the said place, elect and nominate one other of the said Company to be Governor or Deputy Governor for the said Company

in the place and stead of him that so died or was removed ; which person being so elected and nominated to the office of Governor or Deputy Governor of the said Company, shall have and exercise the said office for and during the residue of the said year, taking first a corporal oath, as is aforesaid, for the due execution thereof ; and this to be done from time to time so often as the case shall so require : AND ALSO, our will and pleasure is, and by these presents, for us, our heirs and successors, WE DO grant unto the said Governor and Company, that when and as often as it shall happen any person or persons of the Committee of the said Company for the time being, at any time within one year next after that they or any of them shall be nominated, elected and sworn to the office of Committee of the said Company as is aforesaid, to die or to be removed from the said office, which Committees not demeaning themselves well in their said office, we will to be removable at the pleasure of the said Governor and Company, or the greater part of them, whereof the Governor of the said Company for the time being or his Deputy to be one, that then and so often, it shall and may be lawful to and for the said Governor, and the rest of the Company for the time being, or the greater part of them, whereof the Governor for the time being or his Deputy to be one, within convenient time after the death or removing of any of the said Committee, to assemble themselves in such convenient place as is or shall be usual and accustomed for the election of the Governor of the said Company, or where else the Governor of the said Company for the time being or his Deputy shall appoint : And that the said Governor and Company, or the greater part of them, whereof the Governor for the time being or his Deputy to be one, being then and there present, shall and may, then and there, before their departure from the said place, elect and nominate one or more of the said Company to be of the Committee of the said Company in the place and stead of him or them that so died, or were or was so removed, which person or persons so nominated and elected to the

office of Committee of the said Company, shall have and exercise the said office for and during the residue of the said year, taking first a corporal oath, as is aforesaid, for the due execution thereof, and this to be done from time to time, so often as the case shall require : And to the end the said Governor and Company of Adventurers of England trading into Hudson's Bay may be encouraged to undertake and effectually to prosecute the said design, of our more especial grace, certain knowledge and mere motion, WE HAVE given, granted and confirmed, and by these presents, for us, our heirs and successors, DO give, grant and confirm, unto the said Governor and Company, and their successors, the sole trade and commerce of all those seas, straits, bays, rivers, lakes, creeks and sounds, in whatsoever latitude they shall be, that lie within the entrance of the straits, commonly called Hudson's Straits, together with all the lands and territories upon the countries, coasts, and confines of the seas, bays, lakes, rivers, creeks and sounds aforesaid, that are not already actually possessed by or granted to any of our subjects, or possessed by the subjects of any other Christian Prince or State, with the fishing of all sorts of fish, whales, sturgeons and all other royal fishes in the seas, bays, inlets and rivers within the premises, and the fish therein taken, together with the royalty of the sea upon the coasts within the limits aforesaid, and all mines royal, as well discovered as not discovered, of gold, silver, gems and precious stones, to be found or discovered within the territories, limits and places aforesaid, and that the said land be from henceforth reckoned and reputed as one of our plantations or colonies in America, called "Rupert's Land" : AND FURTHER WE DO by these presents, for us, our heirs and successors, make, create, and constitute the said Governor and Company for the time being, and their successors, the true and absolute lords and proprietors of the same territory, limits and places aforesaid, and of all other the premises, SAVING ALWAYS the faith, allegiance and sovereign dominion due to us, our heirs and successors, for the same to HAVE,

HOLD, possess and enjoy the said territory, limits and places, and all and singular other the premises hereby granted as aforesaid, with their and every of their rights, members, jurisdictions, prerogatives, royalties and appurtenances whatsoever, to them the said Governor and Company, and their successors for ever, TO BE HOLDEN of us, our heirs and successors, as of our manor of East Greenwich, in our county of Kent, in free and common soccage, and not in capite or by Knight's service ; YIELDING AND PAYING yearly to us, our heirs and successors, for the same, two elks and two black beavers, whensoever and as often as we, our heirs and successors, shall happen to enter into the said countries, territories and regions hereby granted : AND FURTHER, our will and pleasure is, and by these presents, for us, our heirs and successors, WE DO grant unto the said Governor and Company, and to their successors, that it shall and may be lawful to and for the said Governor and Company, and their successors, from time to time, to assemble themselves, for or about any the matters, causes, affairs or businesses of the said trade, in any place or places for the same convenient, within our dominions or elsewhere, and there to hold court for the said Company and the affairs thereof ; and that, also, it shall and may be lawful to and for them, and the greater part of them, being so assembled, and that shall then and there be present, in any such place or places, whereof the Governor or his Deputy for the time being to be one, to make, ordain and constitute such and so many reasonable laws, constitutions, orders and ordinances as to them, or the greater part of them, being then and there present, shall seem necessary and convenient for the good government of the said Company, and of all governors of colonies, forts and plantations, factors, masters, mariners and other officers employed or to be employed in any of the territories and lands aforesaid, and in any of their voyages ; and for the better advancement and continuance of the said trade or traffic and plantations, and the same laws, constitutions, orders and ordinances so made,

to put in, use and execute accordingly, and at their pleasure to revoke and alter the same or any of them, as the occasion shall require : And that the said Governor and Company, so often as they shall make, ordain or establish any such laws, constitutions, orders and ordinances, in such form as aforesaid, shall and may lawfully impose, ordain, limit and provide such pains, penalties and punishments upon all offenders, contrary to such laws, constitutions, orders and ordinances, or any of them, as to the said Governor and Company for the time being, or the greater part of them, then and there being present, the said Governor or his Deputy being always one, shall seem necessary, requisite or convenient for the observation of the same laws, constitutions, orders and ordinances ; and the same fines and amerciaments shall and may, by their officers and servants from time to time to be appointed for that purpose, levy, take and have, to the use of the said Governor and Company, and their successors, without the impediment of us, our heirs or successors, or of any the officers or ministers of us, our heirs or successors, and without any account therefore to us, our heirs or successors, to be made : All and singular which laws, constitutions, orders, and ordinances, so as aforesaid to be made, WE WILL to be duly observed and kept under the pains and penalties therein to be contained ; so always as the said laws, constitutions, orders and ordinances, fines and amerciaments, be reasonable and not contrary or repugnant, but as near as may be agreeable to the laws, statutes or customs of this our realm ; AND FURTHERMORE, of our ample and abundant grace, certain knowledge and mere motion, WE HAVE granted, and by these presents, for us, our heirs and successors, DO grant unto the said Governor and Company, and their successors, that they and their successors, and their factors, servants and agents, for them and on their behalf, and not otherwise, shall for ever hereafter have, use and enjoy, not only the whole, entire and only trade and traffic, and the whole, entire and only liberty, use and privilege of trading and trafficking to and from the

territory, limits and places aforesaid ; but also the whole and entire trade and traffic to and from all havens, bays, creeks, rivers, lakes and seas, into which they shall find entrance or passage by water or land out of the territories, limits or places aforesaid ; and to and with all the natives and people inhabiting, or which shall inhabit within the territories, limits and places aforesaid ; and to and with all other nations inhabiting any the coasts adjacent to the said territories, limits and places which are not already possessed as aforesaid, or whereof the sole liberty or privilege of trade and traffic is not granted to any other of our subjects : AND WE, of our further royal favour, and of our more especial grace, certain knowledge and mere motion, HAVE granted, and by these presents, for us, our heirs and successors, DO grant to the said Governor and Company, and to their successors, that neither the said territories, limits and places hereby granted as aforesaid, nor any part thereof, nor the islands, havens, ports, cities, towns, or places thereof or therein contained, shall be visited, frequented or haunted by any of the subjects of us, our heirs or successors, contrary to the true meaning of these presents, and by virtue of our prerogative royal, which we will not have in that behalf argued or brought into question : WE STRAIGHTLY charge, command and prohibit for us, our heirs and successors, all the subjects of us, our heirs and successors, of what degree or quality soever they be, that none of them, directly or indirectly do visit, haunt, frequent, or trade, traffic or adventure, by way of merchandize, into or from any of the said territories, limits or places hereby granted, or any or either of them, other than the said Governor and Company, and such particular persons as now be or hereafter shall be of that Company, their agents, factors and assigns, unless it be by the license and agreement of the said Governor and Company in writing first had and obtained, under their common seal, to be granted, upon pain that every such person or persons that shall trade or traffic into or from any of the countries, territories or limits aforesaid, other than the said Go-

and Governor and Company, and their successors, shall incur our indignation, and the forfeiture and the loss of the goods, merchandizes and other things whatsoever, which so shall be brought into this realm of England, or any the dominions of the same, contrary to our said prohibition, or the purport or true meaning of these presents, for which the said Governor and Company shall find, take and seize in other places out of our dominion, where the said Company, their agents, factors or ministers shall trade, traffic or inhabit by virtue of these our letters patent, as also the ship and ships, with the furniture thereof, wherein such goods, merchandizes and other things shall be brought and found ; the one-half of all the said forfeitures to be to us, our heirs and successors, and the other half thereof WE DO by these presents clearly and wholly, for us, our heirs and successors, give and grant unto the said Governor and Company, and their successors : AND FURTHER, all and every the said offenders, for their said contempt, to suffer such other punishment as to us, our heirs and successors, for so high a contempt, shall seem meet and convenient, and not to be in any wise delivered until they and every of them shall become bound unto the said Governor for the time being in the sum of One thousand pounds at the least, at no time then after to trade or traffic into any of the said places, seas, straits, bays, ports, havens or territories aforesaid, contrary to our express commandment in that behalf set down and published : AND FURTHER, of our more especial grace, WE HAVE condescended and granted, and by these presents, for us, our heirs and successors, DO grant unto the said Governor and Company, and their successors, that we, our heirs and successors, will not grant liberty, license or power to any person or persons whatsoever, contrary to the tenour of these our letters patent, to trade, traffic or inhabit, unto or upon any the territories, limits or places afore specified, contrary to the true meaning of these presents, without the consent of the said Governor and Company, or the most part of them : AND, of our more abundant grace

and favour to the said Governor and Company, WE DO hereby declare our will and pleasure to be, that if it shall so happen that any of the persons free or to be free of the said Company of Adventurers of England trading into Hudson's Bay, who shall, before the going forth of any ship or ships appointed for a VOYAGE or otherwise, promise or agree, by writing under his or their hands, to adventure any sum or sums of money towards the furnishing any provision, or maintenance of any voyage or voyages, set forth, or to be set forth, or intended or meant to be set forth, by the said Governor and Company, or the more part of them present at any public assembly, commonly called their General Court, shall not within the space of twenty days next after warning given to him or them by the said Governor or Company, or their known officer or minister, bring in and deliver to the Treasurer or Treasurers appointed for the Company, such sums of money as shall have been expressed and set down in writing by the said person or persons, subscribed with the name of said Adventurer or Adventurers, that then and at all times after it shall and may be lawful to and for the said Governor and Company, or the more part of them present, whereof the said Governor or his Deputy to be one, at any of their General Courts or General Assemblies, to remove and disfranchise him or them, and every such person and persons at their wills and pleasures, and he or they so removed and disfranchised, not to be permitted to trade into the countries, territories and limits aforesaid, or any part thereof, nor to have any adventure or stock going or remaining with or amongst the said Company, without the special license of the said Governor and Company, or the more part of them present at any General Court, first had and obtained in that behalf, any thing before in these presents to the contrary thereof in anywise notwithstanding: AND OUR WILL AND PLEASURE IS, and hereby we do also ordain, that it shall and may be lawful to and for the said Governor and Company, or the greater part of them, whereof the Governor for the time be-

ing or his Deputy to be one, to admit into and to be of the said Company all such servants or factors, of or for the said Company, and all such others as to them or the most part of them present, at any court held for the said Company, the Governor or his Deputy being one, shall be thought fit and agreeable with the orders and ordinances made and to be made for the government of the said Company : AND FURTHER, our will and pleasure is, and by these presents for us, our heirs and successors, WE DO grant unto the said Governor and Company, and to their successors, that it shall and may be lawful in all elections and by-laws to be made by the General Court of the Adventurers of the said Company, that every person shall have a number of votes according to his stock, that is to say, for every hundred pounds by him subscribed or brought into the present stock, one vote, and that any of those that have subscribed less than One hundred pounds, may join their respective sums to make up One hundred pounds, and have one vote jointly for the same, and not otherwise : AND FURTHER, of our special grace, certain knowledge, and mere motion, WE DO, for us, our heirs and successors, grant to and with the said Governor and Company of Adventurers of England trading into Hudson's Bay, that all lands, islands, territories, plantations, forts, fortifications, factories or colonies, where the said Company's factories and trade are or shall be, within any the ports or places afore limited, shall be immediately and from henceforth under the power and command of the said Governor and Company, their successors and assigns ; SAVING the faith and allegiance due to be performed to us, our heirs and successors, as aforesaid ; and that the said Governor and Company shall have liberty, full power and authority to appoint and establish Governors and all other officers to govern them, and that the Governor and his Council of the several and respective places where the said Company shall have plantations, forts, factories, colonies or places of trade within any the countries, lands or territories hereby granted, may have power to judge all persons be-

longing to the said Governor and Company, or that shall live under them, in all causes, whether civil or criminal, according to the laws of this kingdom, and to execute justice accordingly ; and in case any crime or misdemeanour shall be committed in any of the said Company's plantations, forts, factories or places of trade within the limits aforesaid, where judicature cannot be executed for want of a Governor and Council there, then in such case it shall and may be lawful for the chief Factor of that place and his Council to transmit the party, together with the offence, to such other plantation, factory or fort where there shall be a Governor and Council, where justice may be executed, or into this kingdom of England, as shall be thought most convenient, there to receive such punishment as the nature of his offence shall deserve : AND MOREOVER, our will and pleasure is, and by these presents, for us, our heirs and successors WE DO GIVE and grant unto the said Governor and Company, and their successors, free liberty and license, in case they conceive it necessary, to send either ships of war, men or ammunition unto any their plantations, forts, factories or places of trade aforesaid, for the security and defence of the same, and to choose commanders and officers over them, and to give them power and authority, by commission under their common seal, or otherwise, to continue or make peace or war with any prince or people whatsoever, that are not Christians, in any places where the said Company shall have any plantations, forts or factories, or adjacent thereunto, as shall be most for the advantage and benefit of the said Governor and Company, and of their trade : and also to right and recompense themselves upon the goods, estates or people of those parts, by whom the said Governor and Company shall sustain any injury, loss or damage, or upon any other people whatsoever, that shall in any way, contrary to the intent of these presents, interrupt, wrong or injure them in their said trade, within the said places, territories and limits granted by this Charter : And that it shall and may be lawful to and for the said Governor and Company, and

their successors, from time to time, and at all times from henceforth, to erect and build such castles, fortifications, forts garrisons, colonies or plantations, towns or villages, in any parts or places within the limits and bounds granted before in these presents unto the said Governor and Company, as they in their discretion shall think fit and requisite, and for the supply of such as shall be needful and convenient, to keep and be in the same, to send out of this kingdom, to the said castles, forts, fortifications, garrisons, colonies, plantations, towns or villages, all kinds of clothing, provision of victuals, ammunition and implements necessary for such purpose, paying the duties and customs for the same, as also to transport and carry over such number of men being willing thereunto, or not prohibited, as they shall think fit, and also to govern them in such legal and reasonable manner as the said Governor and Company shall think best, and to inflict punishment for misdemeanors, or impose such fines upon them for breach of their orders, as in these presents are formerly expressed : AND FURTHER, our will and pleasure is, and by these presents, for us, our heirs and successors, WE DO grant unto the said Governor and Company, and to their successors, full power and lawful authority to seize upon the persons of all such English, or any other our subjects which shall sail into Hudson's Bay, or inhabit in any of the countries, islands or territories hereby granted to the said Governor and Company, without their leave and license, and in that behalf first had and obtained, or that shall contemn or disobey their orders, and send them to England and that all and every person or persons, being our subjects, any ways employed by the said Governor and Company, within any the parts, places, and limits aforesaid, shall be liable unto and suffer such punishment for any offences by them committed in the parts aforesaid, as the President and Council for the said Governor and Company there shall think fit, and the merit of the offence shall require, as aforesaid ; and in case any person or persons being convicted and sentenced by the President and Council of the said Governor and Company, in the countries, lands or

limits aforesaid, their factors or agents there, for any offence by them done, shall appeal from the same, that then and in such case it shall and may be lawful to and for the said President and Council, factors or agents, to seize upon him or them, and to carry him or them home prisoners into England, to the said Governor and Company, there to receive such condign punishment as his cause shall require, and the law of this nation allow of; and for the better discovery of abuses and injuries to be done unto the said Governor and Company, or their successors, by any servant by them to be employed in the said voyages and plantations, it shall and may be lawful to and for the said Governor and Company, and their respective President, Chief Agent or Governor in the parts aforesaid, to examine upon oath all factors, masters, pursers, supercargoes, commanders of castles, forts, fortifications, plantations or colonies, or other persons, touching or concerning any matter or thing in which by law or usage an oath may be administered, so as the said oath, and the matter therein contained, be not repugnant, but agreeable to the laws of this realm: AND WE DO hereby straitly charge and command all and singular our Admirals, Vice-Admirals, Justices, Mayors, Sheriffs, Constables, Bailiffs, and all and singular other our officers, ministers, liege men and subjects whatsoever to be aiding, favouring, helping and assisting to the said Governor and Company, and to their successors, and to their deputies, officers, factors, servants, assigns and ministers, and every of them, in executing and enjoying the premises, as well on land as on sea, from time to time, when any of you shall thereunto be required; ANY STATUTE, act, ordinance, proviso, proclamation or restraint heretofore had, made, set forth, ordained or provided, or any other matter, cause or thing whatsoever to the contrary in anywise notwithstanding. IN WITNESS WHEREOF we have caused these our Letters to be made Patent. WITNESS OURSELF at Westminster, the second day of May, in the two-and-twentieth year of our reign.

By Writ of Privy Seal.

Pigott.

APPENDIX B.

EXTRACTS FROM BENJAMIN FRANKLIN'S LETTERS TO HIS SON.—See *Spark's "Franklin,"* vol. 4.

May 10, 1766.—I like the project of a colony in Illinois country, and will forward it to my utmost here.

Aug. 25, 1766.—I can now only add that I shall endeavor to accomplish all that you and your friends desire relating to the settlement westward.

Sept. 12, 1766.—I have just received Sir William's open letter to Secretary Conway, recommending your plan for a colony in the Illinois, which I am glad of. I have closed and sent it to him. He is not now in that Department ; but it will of course go to Lord Shelburne, whose good opinion of it I have reason to hope for—and I think Mr. Conway was rather against distant Posts and settlements in America. We have, however, suffered a loss in Lord Dartmouth, who I know was inclined to grants there in favour of the soldiery, and Lord Hillsborough is said to be terribly afraid of dispeopleing Ireland. Gen. Lyman has been long here soliciting such a grant, and will readily join the interest he has made with ours ; and I should wish for a body of Connecticut settlers, rather than all from our frontiers. I purpose waiting on Lord Shelburne on Tuesday, and hope to be able to send you his sentiments by Falconer, who is to sail about the 20th. A good deal, I imagine, will depend on the account when it arrives of Mr. Croghan's negotiation in that country. This is an affair I shall seriously set about ; but there are such continual changes here that it is very discouraging to all applications to be made to the Ministry. I thought the last set to be well established ; but they are broken and gone. The present set are hardly thought to stand very firm, and God only knows whom we are to have next. The plan is, I think, well drawn, and, I imagine, Sir William's approbation will go a great way in recommending it, as he is much relied on in all

affairs that may have any relation to the Indians. Lord Adam Gordon is not in town, but I shall take the first opportunity of conferring with him. I thank the Company for their willingness to take me in, and one or two others that I may nominate. I have not yet concluded whom to propose it to ; but I suppose our friend Sargent should be one. I wish you had allowed me to name more, as there will be in the proposed country, by reckoning, near sixty-three millions of acres, and therefore enough to content a great number of reasonable people ; and by numbers we might increase the weight of interest here. But perhaps we shall do without.

Sept. 27, 1766.—I have mentioned the Illinois affair to Lord Shelburne. His lordship has read your plan for establishing a colony there, recommended by Sir William Johnson, and said it appeared to him a reasonable scheme ; but he found it did not quite rate with the sentiments of people here ; that their objections to it were, the distance, which would make it of little use to this country, as the expense on the carriage of goods would oblige the people to manufacture for themselves ; that it would for the same reason be difficult both to defend it and to govern it ; that it might lay the foundation of a Power in the heart of America, which in time might be troublesome to the other colonies, and prejudicial to our government over them ; and the people were wanted both here and in the already settled colonies, so that none could be spared for a new colony. These arguments, he said, did not appear of much weight, and I endeavoured by others to invalidate them entirely. But his lordship did not declare whether he would or would not promote the undertaking, and we are to talk further upon it.

I communicated to him two letters of Mr. Crogan's, with his journal, and one or two of yours on the subject, which he said he would read and consider ; and I left with him one of Evans' maps of the middle colonies, in the small scale part of which I had marked with a wash of red ink the whole country included in your boundaries. His lordship remarked

that this would coincide with Gen. Lyman's project, and that they might be united.

Sept. 30, 1766.—I have just had a visit from Gen. Lyman, and a good deal of conversation on the Illinois scheme. He tells me that Mr. Morgan, who is Under-Secretary of the Southern Department, is much pleased with it, and we are to go together to talk to him concerning it.

Oct. 11, 1766.—I was again with Lord Shelburne a few days since, and said a good deal to him on the affair of the Illinois settlement. He was pleased to say that he really approved of it; but intimated that every new proposed expense for America would meet with great difficulty here, the Treasury being alarmed and astonished at the growing charges there, and the heavy accounts and drafts continually brought in from thence; that Major Farmer, for instance, had lately drawn for no less than thirty thousand pounds, extraordinary charges, on his going to take possession of the Illinois, and that the Superintendents, particularly the Southern one, began also to draw very largely. He spoke, however, handsomely of Sir William on many accounts.

Nov. 8, 1776.—Mr. Jackson has now come to town. The Ministry have asked his opinion and advice on your plan of a colony in the Illinois, and he has just sent me to peruse his answer in writing, in which he warmly recommends it, and enforces it by strong reasons, which give me great pleasure, as it corroborates what I have been saying on the same topic, and from him appears less to be suspected of some American bias.

June 13, 1767.—The Illinois affair goes forward but slowly. Lord Shelburne told me again last week that he highly approved of it, but others were not of his sentiments, particularly the Board of Trade. Lyman is almost out of patience, and now talks of carrying out his settlers without leave.

Aug. 28, 1767.—Last week I dined at Lord Shelburne's, and had a long conversation with him and Mr. Conway (there being no other company) on the subject of reducing

the American expenses. They have it in contemplation to return the management of Indian affairs into the hands of the several Provinces on which the nations border, that the colonies may bear the charge of treaties and the like, which they think will be then managed more frugally, the Treasury being tired with the immense drafts of the Superintendents.

I took the opportunity of urging it as one mode of saving expense in supporting the outposts that a settlement should be made in the Illinois country, expatiated on the various advantages, namely, furnishing provisions cheaper to the garrisons securing the country, retaining the trade, raising a strength there, which on occasion of a future war, might easily be poured down the Mississippi upon the lower country, and into the Bay of Mexico, to be used against Cuba, the French islands, or Mexico itself. I mentioned your plan, its being approved of by Sir William Johnson, and the readiness and ability of the gentlemen concerned to carry the settlement into execution with very little expense to Government. The Secretaries appeared finally to be fully convinced, and there remained no obstacle but the Board of Trade, which was to be brought over privately before the matter was referred to them officially. In case of laying aside the Superintendents, a provision was thought of for Sir William Johnson. He will be made Governor of the new colony.

Oct. 9, 1767.—I returned last night from Paris, and just now hear that the Illinois settlement is approved of in the Cabinet Council so far as to be referred to the Board of Trade for their opinion, who are to consider it next week.

Nov. 13, 1767.—Since my return, the affair of the Illinois settlement has been renewed. The King in Council referred the proposal to the Board of Trade, who called for the opinion of the merchants on two points, namely whether the settlement of colonies in the Illinois country and at Detroit might not contribute to promote and extend the commerce of Great Britain; and whether the regulation of the Indian trade might not be best left to the several colonies that carry on

such trade—both which questions they considered at a meeting, where Mr. Jackson and I were present, and answered in the affirmative unanimously, delivering their report accordingly to the Board.

Nov. 25, 1767.—As soon as I received Mr. Galloway's, Mr. S. Wharton's, and Mr. Crogan's letters on the subject of the (Indian) *boundary*, I communicated them to Lord Shelburne. He invited me next day to dine with him. Lord Clare was to have been there, but did not come. There was nobody but Mr. Maclean. My lord knew nothing of the boundaries having been agreed on by Sir William ; had sent the letters to the Board of Trade, directing search to be made there for Sir William's letters ; and ordered Mr. Maclean to search the Secretary's office, who found nothing. We had much discourse about it, and I pressed the importance of despatching orders immediately to Sir William to complete the affair. His lordship asked who was to make the purchase, that is, who should be at the expense. I said that if the line included any lands within the grants of the charter colonies, they should pay the purchase-money of such proportion. If any within the proprietary grants, they should pay their proportion. But what was within Royal governments, where the King granted the lands, the Crown should pay for that proportion. His lordship was pleased to say he thought this reasonable. He finally desired me to go to Lord Clare as from him, and urge the business there, which I undertook to do. * * *

I waited next morning on Lord Clare, and pressed the matter of the *boundary* closely upon him. * * * He agreed upon settling it, but thought there would be some difficulty about who should pay the purchase-money ; for that this country was already so loaded, it would bear no more. We then talked of the *new colonies*. I found he was inclined to think one near the mouth of the Ohio might be of use in securing the country, but did not much approve that at Detroit. X
And, as to the trade he imagined it would be of little conse-

quence, if we had it all, but supposed our traders would sell the peltry chiefly to the French and Spaniards at New Orleans, as he had heard they had hitherto done.

March 13, 1768.—The purpose of settling the *new colonies* seems at present to be dropped, the change of American administration not appearing favourable to it. There seems rather to be an inclination to abandon the posts in the back country, as more expensive than useful. But counsels are so continually fluctuating here that nothing can be depended on. The new Secretary, Lord H., is, I find, of opinion that the troops should be placed, the chief part of them in Canada and Florida. * * *

ON THE COLONIZATION OF THE ILLINOIS COUNTRY.—*Extract.*

[*Sir William Johnson to the Lords of Trade and Plantations.*]

JOHNSON'S HALL, Jan. 31, 1776.

MY LORDS,— * * * I have received the agreeable news of our being in actual possession of the Illinois, the Indians, in consequence of their engagements to Mr. Crogan, having given no obstruction to Captain Stirling or his party, who arrived at Fort Chartres in October last, and were well received.

As the possession of this fine country has been earnestly desired and often in vain attempted since the reduction of Canada, and now proceeds from the late negotiations of my Deputy with the Indians in that quarter, it may not be amiss to offer my thoughts on the best manner for possessing so valuable an acquisition, and render it of real use to the Crown. It will be needless to enlarge upon the natural advantages of soil and situation which this country peculiarly enjoys, these being matters pretty well known; but to avail ourselves of these advantages, it is highly necessary that we should do all in our power to keep the Indians contented, easy and reconciled to our manners and government, without

which we can neither keep up the communication, or retain it for any time, and the difficulties and obstructions which have hitherto prevented our possessing it, by way of the Mississippi, are convincing proof of this. Neither is it in our power, with any force to be spared for that service, to ascend the river or cross the country by land to that settlement, if the Indians are at all disposed to obstruct their progress.* The settlements at the Illinois extend for many miles above the Kaskaski river along the Mississippi; the land is extremely fine, and capable of raising anything. Some of the present inhabitants may possibly incline to go home, and our traders will, I dare say, choose to purchase their rights; this may be a foundation for a valuable colony in that country, which, once established, would prove very beneficial to Great Britain, as well as a great check to the large cessions obtained of the natives. But to effect this, and every other purpose, their jealousies and dislike must be conquered, and they must be convinced by a series of good management and occasional generosity that their suspicions are groundless.—*N. Y. Hist. Doc., vol. 8.*

APPENDIX C.

SO MUCH OF THE DEBATE IN THE HOUSE OF COMMONS ON THE QUEBEC BILL AS RELATES TO THE BOUNDARIES.

Mr. T. Townshend, jun.—Although I bow very low to all great authorities, I must venture to mention one thing, that when I was calling for regulations for Canada, little did I think, that I was calling for regulations for a country much larger than Canada, a country “extending,” in the words of the Bill, “southward to the banks of the River Ohio, westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants’ Adven-

* The expeditions of Lord Dunmore and Colonel Boquet would seem to warrant different conclusion.

turers of England trading to Hudson's Bay." I say, Sir, that when I was calling for regulations for Canada, little did I think that I was calling for an arrangement which, I will venture to say, is oppressive to the English subject, and disagreeable and hateful to the Canadian. * * * I know there prevails an opinion that the best thing you can do with this country is to make it a French colony, to keep the English out of it as much as possible, that they may not mix with the Canadians. * * * Now, for what purpose are they (the English settlers) to be placed under French laws, unless it is meant to be laid as a foundation that, for the future, French laws are to be the laws of America? If this is to be the case, Sir, that may be a good reason for extending French law to the whole of Illinois, and to all that is intermediate between Illinois and Canada. *You have given up to Canada almost all that country which was the subject of dispute, and for which we went to war. We went to war calling it the Province of Virginia.* You tell the French it was only a pretext for going to war; that you knew then, you know now, that it was a part of the Province of Canada. * * * I should wish to know why Canada may not be reduced to some less limits; why not the same limits England and France have ever given it; why not within some bounds, a little less than that which is given to it here?

Lord North.— * * * The first thing objected to by the honourable gentleman is the very great extent of territory given to the Province. Why, he asks, is it so extensive? There are added undoubtedly to it two countries which were not in the original limits of Canada, as settled in the proclamation of 1763: one, the Labrador coast, the other, the country westward of the Ohio and Mississippi, and a few scattered posts to the west. Sir, the addition of Labrador coast has been made in consequence of information received from those best acquainted with Canada and the fishery upon that coast, who deem it absolutely necessary, for the preservation of that fishery, that the Labrador coast should no longer be

considered as a part of the government of Newfoundland but be annexed to that country. With respect to the other additions, these questions very fairly occur. It is well known that settlers are in the habit of going to the interior parts from time to time. Now, however undesirable, *it is open to Parliament to consider whether it is fit there should be no government in the country, or, on the contrary, separate and distinct governments; or whether the scattered posts should be annexed to Canada.* The House of Lords have thought proper to annex them to Canada; but when we consider that there must be some government, and that it is the desire of all those who trade from Canada to those countries, that there should be some government, my opinion is that if gentlemen will weigh the inconveniences of separate governments, *they will think the least inconvenient method is to annex those spots, though few in population, great in extent of territory, rather than to leave them without government at all, or make them separate ones.* Sir, the annexation likewise is the result of the desire of the Canadians and of those who trade to those settlements, who think they cannot trade with safety as long as they remain separate.

Mr. T. Townsend, jun.— * * * Near the Illinois and Fort du Cane, I am informed there are at this time upwards of five-and-twenty thousand British settlers.

Mr. Dunning.— * * * The first object of this Bill is to make out that to be Canada, which it was the struggle of this country to say was not Canada. Now, Sir, if this Province should ever be given back to its old masters—and *I am not without an inclination to think that the best way would be to give it back to its old masters*—if it should ever become right to give back Canada, with what consistency can its future negotiator say to France, We will give you back Canada; not that Canada which you asserted to be Canada, but that stated in the proclamation, having discovered that we were mistaken in the extent of it, which error has been corrected by the highest authority in this country? Then, suppose Canada

thus extended should be given back to France, the English settled there will then have a line of frontier to an extent undefined by this Bill ; for this country is bounded by the Ohio on the west—God knows where ! I wish God alone may not know where. I wish any gentleman would tell us where. I observe in this description of frontier a studied ambiguity of phrase. I cannot tell what it means ; but I conjecture that it means something bad. The Ohio is stated as a boundary confirmed by the Crown ; but what act, what confirmation by the Crown has passed upon this subject ? I know of no such act, of no such confirmation. I know, by the terms of the Charter, the colonists suppose, and I think they are well grounded in the supposition, that they are entitled to settle back as far as they please to the east (? West) to the sea, their natural boundary. They did not like a different barrier. I know some assert this right, and others content themselves with a less extensive claim. Whether so extensive a claim has been allowed, I know not ; but I do understand, in point of fact, that there has been long subsisting a dispute about the western frontier, which was never discussed, still less decided ; and when this Bill shall become a law, those colonists will then learn that this Parliament, at this hour, have decided this dispute without knowing what the dispute was, and without hearing the parties. Looking, Sir, at the map, I see the River Ohio takes its rise in a part of Pennsylvania, and runs through the Province of Virginia ; that, supposing myself walking down the river, all the country to the right, which is at this moment a part of the Province of Virginia, has been lopped off from this part, and has become instead a part of Canada ; for, we tell them, the instant they pass that river, which by the terms of the Charter they may pass, that matter is now for ever at rest ; the moment, say we, you get beyond that river, you are in the condition in which this Bill professes to put Canada—the Indian finds himself out of the protection of that law under which he was bred. Sir, do we treat the proprietors of

Indiana well ? Some of them are resident in this country I apprehend, at this very hour they are unapprised of this Bill to stop them. To decide upon questions without exactly knowing whether such questions are existing, is an obvious injustice. * * * I should be glad to learn what is the good intended to be effected by this extent of territory ? The noble lord says it is to comprise a few straggling posts under some form of government. If I should admit the necessity of so comprising a few straggling posts, does it follow that this is a form of government fit to be established ? Does it follow from any local reasons why Canada should be so extensive, or that the English settlers should be likewise involved ? What objections are there to making more settlements ? Whatever they are, they will be found trivial, compared to the consequence of involving this whole region in this form of government. * * *

Attorney-General Thurlow.— * * * The honourable gentlemen complain that the bounds of Canada extend a great way beyond what they were acknowledged to do formerly, and that it was peculiarly bad policy, as far as it regarded the French, to give the limits so great an extension. Now, the House will remember that the whole of Canada, as we allowed it to extend, was not included in the proclamation ; that the bounds were not coequal with it as it stood then, *and that it is not included in the present Act of Parliament*, if that were material. But I will not, Sir, consider it as the *Province that formerly belonged to France, nor as called by the same name* ; it is a new scheme of a constitution adapted for a part of the country, not that part only which was under French government, but embracing many other parts of great extent which were formerly not under French government, but were certainly occupied in different parts by French settlers, and French settlers only. The honorable gentlemen are mistaken if they suppose that the bounds described embrace in point of fact any English settlement. I know of no English settlement

embraced by it. I have heard a great deal of the commencement of English settlements ; but, as far as I have read, they all lie upon the other side of the Ohio.* I know at the same time, *that there have been for nearly a century past, settlements in different parts of all this tract, especially in the southern parts of it, and in the eastern (? western), bounded by the Ohio and Mississippi* ; but with regard to that part, there have been different tracts of French settlements established. As far as they are inhabited by any but Indians, I take those settlements to have been altogether French ; so that the objection certainly wants foundation. * * * It is undoubtedly true, if you read the French history, that the bounds prescribed neither are nor ever were the bounds of the Province of Canada, as stated by the French ; and therefore the argument is not itself a proper one to proceed upon. * * * With regard to the more southern part of the country, I do not take it that Virginia has ever made a single claim within more than a hundred miles of the bounds prescribed for the present Province. The most extensive claim I ever heard of went to what is called The Endless Mountains, just in a nook of the Province of Virginia (? Pennsylvania). I know of none that ever pretended to exceed that, nor ever heard that some new settlements which were applied for, between these mountains and the Ohio, have ever been looked upon as an invasion of the rights of those who have claims upon the Province of Virginia. * * * I have always understood, also, that it was under that authority, and in conformity with the rule and measure of law, that in every instance, through every period of English history, the King has given to newly-conquered countries their constitution ; subject to be corrected by the joint interposition of the King, Lords, and Commons of this country ; and that such a constitution might be reformed, by

* There were at this time no English settlements west of the Ohio river. Franklin, in his reply to the Lords of Trade, refers to a settlement of 30,000 on the Ohio ; but it was on the other side—and this is probably the one that Mr. Townshend and others refer to, but they had forgotten the locality.

correcting the ill advice, if any ill advice had been given, under which the King had acted, in giving them a constitution upon the event and at the moment of the conquest.

Col. Barre.— * * * The honourable and learned gentleman was not precise in stating the limits of our colonies. He seemed unwilling for the House to think that any one of the colonies, especially Pennsylvania and Virginia, had a right to settle beyond the Endless Mountains ;* as if the honorable and learned gentleman could be ignorant of the fact that many thousands of English subjects are established some hundred miles beyond the Endless Mountains, upon the very spot which you are now going to make a part of this country of Canada. * * * It was, says the noble lord, necessary to take in and to annex the scattered Posts in the neighbourhood of Detroit and Lake Michigan. If the noble lord will be so good as to look at the map, he will find he could have taken in every one of those Posts, and never thrown out any doubt about the shape of Canada ; at the same time that all that part between the Lake and the Ohio would have been kept out by this Bill—and all the purposes of the Bill, except the reference to settling upon the Ohio, would have been answered by his taking that boundary. If there had been any doubt, what would have removed that doubt, would have been looking at the course pursued between the English and French negotiators, when the French offered to withdraw from that part of the country which they had taken possession of on the south of the Ohio, and retire to the north side, making that river the boundary of the colony. The English Minister said, “ No ; we will not submit to those terms. They are not the boundaries ; the River St. Lawrence and the lakes are our boundary—we will agree to no other.” Their language now is, the River St. Lawrence is the centre, not the frontier ; we will not be deprived of our property in the country.

* For the position of the Endless Mountains, see Pownall's map. They are near the northern part of Pennsylvania.

Mr. Serjeant G'ynne.— * * * You are incompetent to decide upon the limits of the country, or whether the description of it in the Bill is most conformable to the claim of the French or to our claim before the war ; but I shall take it as I find it stated on both sides of the House, namely, that there is to be a newly-erected Province, comprehending a great part of North America, partly inhabited, partly uninhabited ; that such parts are to be erected into a Province, in hopes that the population will increase, and that all those parts by degrees will become peopled. * * * In times past, a Minister of the Crown was censured for proposing an arbitrary form of government for the colonies. However objectionable that proposed form of government may have been, we do not find that the powers given to the Governor, on that occasion, were so extensive as those vested in him by this measure. The principles which prevailed in the days of Charles the Second will not, I trust, receive the sanction of the legislature of the present day.

Solicitor-General Wedderburn.—*It is one object of this measure that these persons (the English) should not settle in Canada.* The subjects of this country, in Holland, in the Baltic, and in different parts of the world, where they may go to push their commercial views, look upon England as their home ; and it should be our care to keep alive in their breasts this attachment to their native soil. With regard to the other portion of the inhabitants of North America, I think the consideration alters ; if the geographical limits are rightly stated, I think one great advantage of this extension of territory is this, that they will have little temptation to stretch themselves northward. I would not say, “ Cross the Ohio ; you will find the Utopia of some great and mighty empire.” I would say, “ This is the border beyond which, for the advantage of the whole empire, you shall not extend yourselves.” It is a regular government ; and that government will have authority to make inquiry into the views of native adventurers. As to British subjects within the limits, I believe that there are not

five in the whole country. I think this limitation of the boundary will be a better mode than any restriction laid upon government. In the grant of lands, we ought to confine the inhabitants to keep them, according to the ancient policy of the country, along the line of the sea and river.

Mr. Charles Fox.— * * * It is not right for this country to originate and establish a constitution in which there is not a spark of semblance of liberty. A learned gentleman has said that by this means we should deter our own countrymen from settling there. Now, Sir, as it is my notion that it is the policy of this country to induce Englishmen to mix as much as possible with the Canadians, I certainly must come to a different conclusion.

MONDAY, June 6.

The House resolved itself into a Committee upon the Bill, Sir Charles Whitworth in the Chair. The first clause was read, viz. : “ And whereas, by the arrangements made by the said Royal Proclamation, a very large part of the territory of Canada, within which there were several colonies and settlements of the subjects of France, who claimed to remain therein under the faith of the said treaty, was left without any provision being made for the administration of civil government therein, and other parts of the said country, where sedentary fisheries had been established and carried on by the subjects of France, inhabitants of the said Province of Canada, under grants and concessions from the government thereof, were annexed to the government of Newfoundland, &c., be it enacted that all the said territories, islands, and countries heretofore a part of the territory of Canada, in North America, extending southward to the banks of the River Ohio, westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants’ Adventurers of England trading to Hudson’s Bay, and which said territories, islands, and countries are not within the limits of some other British colony, as

allowed and confirmed by the Crown, or which have since the 10th of February 1763, been made part of the government of Newfoundland, be, and they are hereby, during his Majesty's pleasure, annexed to and made part and parcel of the Province of Quebec, as created and established by the said Royal Proclamation of the 7th of October, 1763."

Lord North.— * * * There are great difficulties as to the best mode of proceeding. I apprehend the alteration I am about to propose *will save every right where there is a right*. I will explain the amendment I intend to make ; if that should not give satisfaction, gentlemen will state what it is they propose to substitute in its stead. We shall then ascertain how far we shall be able to make anything more precise. The question is an extremely difficult one. It is usual to have different boundaries laid down in different manners. Where the King is master of the country, then they are drawn by his Majesty's officers only ; *where there has been any grant or charter, and it has been necessary to draw any boundary line, then not only his Majesty's officers, but commissioners have been appointed, and together they draw a line, subject, afterwards, to an appeal to the Privy Council*—therefore that distinction is made here. It is intended, immediately after the passing of this Act, to go on with the project of running the boundary line between Quebec and New York and Pennsylvania, &c., belonging to the Crown. This is made to prevent the Province of Quebec from encroaching on the limits of any of those grants where no boundary has been settled. I find many gentlemen are desirous of having something more precise, if possible. To this I have no objection ; but we are so much in the dark as to the situation of this country, that it is not possible to do anything more safe than saving the rights of the other colonies, leaving them to be settled on the spot by commissioners. Persons possessing local knowledge can act better than we can. For that reason I propose to leave out the words "*heretofore part of the territory of Canada,*" and insert "*extent of country,*" and also leave out the words "*said country,*" and insert "*territory of Canada.*"

Governor Johnstone.— * * * My objection to it is, you are going to extend a despotic government over too large a surface ; and that you are going to establish a boundary line with a pretence of bringing it within the line of justice where God and nature are against you. The pretence that is held out to induce this House to accede to the measure, is, first, that with the former government of Quebec, Canada did extend so far, and that as we are about to give the Canadians back their old laws, we ought at the same time to give them back what has been asserted in this House to have been their ancient territory. * * * Now, Sir, as I had the honour of being appointed Governor of West Florida, it became my duty to make myself acquainted with the boundaries of Louisiana, and I accordingly endeavoured to obtain the best information upon that subject. I was surprised, therefore, to hear it given in evidence, not directly, but insinuated, that the former Government of Canada extended as far as you propose to make it. One of the reasons given by General Carleton for this extension of country, was that the inhabitants of these remote parts might be under the direction of the government of Canada.

Mr. Edmund Burke.—If we had originated this measure above stairs, where maps might have been laid upon the table, no doubt the whole dispute of this day would have been avoided. I shall ask for the attention of the Committee, partly that they may understand me ; partly that I may understand myself. In the first place, when I heard that this Bill was to be brought in on the principle that Parliament were to draw a line of circumvalation about our colonies, and to establish a siege of arbitrary power, by bringing round about Canada the control of other people, different in manners, language, and laws from those of the inhabitants of this colony, I thought of the highest importance that we should endeavour to make this boundary as clear as possible. I conceived it necessary for those who are to be besieged in this manner ; and also necessary for the British subject, who

should be restricted, and not be allowed unknowingly to venture into the colony and disturb its possessors. I wish these limits to be ascertained, and fixed with precision, for the sake of both parties. Having this object in my view, I shall first consider the line drawn in the proclamation of 1763. It was drawn from a point taken in the lake called Nipissim; that lake stands to the north of this point. I entreat the attention of the Committee; for the escape of a word is the escape of the whole argument. Sir, this boundary was fixed by a line drawn obliquely from Lake Nipissim, which line crossing the St. Lawrence and the Lake Champlain, formed an angle in the latitude of forty-five degrees. This constituted the south-west boundary of Canada;* beyond that the Province was to extend no further—and confined within this limit it remained from the year 1763 to this time. That was then the boundary of Canada: and when that boundary was formed, that was the boundary of the government—and that boundary was fixed there because it was the boundary of the possession. There was then no considerable settlement to the south-west of that line. This line the people of Canada acquiesced in. They have since come before his Majesty's government, and have laid before it a complaint in which they state that this was a line drawn especially for the purpose of territorial jurisdiction and the security of property; but they represent that it is a line ill-suited for a growing country. They do not complain that they have not the legal limits, but they complain of the climate to which they are restricted. "The Province," they say, "as it is now bounded, by a line passing through the forty-fifth degree of north latitude, is confined within too narrow limits: this line is only fifteen leagues distant from Montreal, and yet it is only on the left bank of the St. Lawrence that the lands are fertile, and that agriculture can be carried to much advantage." Sir, if no other complaint can be made to any one I don't know a more reasonable one, so that their complaint should be

* This was the boundary between the Province of Canada and Quebec.

attended to. * * * The noble lord showed me the amendment, which by no means relieved my apprehensions. The reason why I feel so anxious is that the line proposed is not a line of geographical distinction merely ; it is not a line between New York and some other English settlement ; it is not a question whether you shall receive English law and English government upon the side of New York, or whether you shall receive a more advantageous government upon the side of Connecticut ; or whether you are restrained upon the side of New Jersey. In all these you still find English laws, English customs, English juries, and English assemblies, wherever you go. But this is a line which is to separate a man from the right of an Englishman. First, the clause provides nothing at all for the territorial jurisdiction of the Province. The Crown has the power of carrying the greatest portion of the actually settled portion of the Province of New York into Canada. * * * The Bill turns freedom itself into slavery. These are the reasons that compel me not to acquiesce by any means, either in the proposition originally in the Bill, or in the amendment. Nay, the proposition in the amendment is a great deal worse, because you therein make a saving of the right of interference with, and may fix your boundary line at the very gates of, New York, perhaps in the very town itself, and subject that colony to the liability of becoming a province of France. It was this state of things, Sir, that made me wish to establish a boundary of certainty. The noble lord has spoken upon this subject with a great deal of fairness. He says that if any gentleman will find a boundary of certainty, he will accept it. Whether, if we shall be able to find such a boundary, the colony of New York will be satisfied with it, I know not ; but speaking here as a Member of Parliament, I do think the colony had better have a boundary much less in extent, yet reduced to such a certainty that they may exactly know when and where they cease to be English subjects. The boundary originally settled between Canada and New York was entitled to contest with

the Crown under the first proclamation. That was given up. I am glad the noble lord has got a map before him. They gave up a vast extent of country. I recommended them to give up for peace all that part which lies between that country and the river St. Lawrence, and to take their departure from a line drawn through Lake Champlain in forty-five degrees of latitude, as far as the River St. Lawrence, then following the course of that river through Lake Ontario and Lake Erie, to make it the western bound of the colony of Pennsylvania. These limits and bounds would give New York a territory sufficient to enable it to meet every exigency of government. It would give the Crown a boundary of certainty ; it would give the people of Canada a certainty of knowing upon what side of the water their territory began ; and it would give the subjects of Great Britain the power of knowing where they can be free. * * * He does not know enough of the state of that country to be able to adopt the line which he has drawn ; whereas nothing can be more geographically distinguished than water and land. This boundary is physically distinguished ; it is astronomically distinguished. It has been fixed by actual observation, and agreed upon by the surveyors. We have everything that geography, astronomy, and general convenience, stronger sometimes than either, can give to make this boundary definite. I shall therefore now move the boundary which I have proposed, viz., by a line drawn from a point on the east side of Lake Champlain in 45 degrees north latitude, and by a line drawn in that parallel west to the River St. Lawrence, and up that river to Lake Ontario, and across that lake to the River Niagara, and from Niagara across Lake Erie to the north-west point of the boundary of Pennsylvania, and down the west boundary of that Province, by a line drawn from thence till it strikes the Ohio. If the noble lord admits this proposition, the Committee will no doubt be able to express it in proper words ; if not, I must beg that we may receive information from a gentleman who can abundantly inform the

House, and who is as ready to communicate it as any man I ever knew.*

Lord North.—We agree in principle, and I hope we shall succeed in drawing a clear boundary line ; but I am doubtful whether a clear boundary line can be drawn by Parliament. It strikes me that the only method is to leave it to be drawn after the passing of the Act, leaving it in such a manner that the line where drawn shall actually form a clear line between the Province of Canada and New York. The line as far as it appears by the map is very distinct. The objection I have is precisely what the honourable gentleman has mentioned. I am not clear whether there are not on the south-east part of the River St. Lawrence, Canadian settlements. I have been informed there are. I am sure there are no New York settlements in that part of the world. I think it more prudent to have the boundary line settled upon the spot, reserving, in the Act, all those lands that have been granted under any authority the old settlers. * * * It is my opinion that all this uninhabited country added to Canada or added to New York should not be immediately considered as country which the Government are to grant away. * * * I rise up at present to confirm the declaration I have made, that if a clear line can be made to the satisfaction of gentlemen, so that they are not likely to involve themselves by drawing a line in Westminster which would be better drawn in America, I shall not opiniatre it, but shall be very thankful to the gentleman who can draw that line.

Mr. Burke.— * * * If Canada is in future to have boundaries determined by the choice of the Crown, the Crown is to have the power of putting a great part of the subjects of England under laws which are not the laws of England. The government of France is good—all government is good—but compared with the English government, that of France is slavery. * * * The parties here are

* Mr. Pownall, the Under-Secretary for the American colonies.

English liberty and French law ; and the whole Province of New York, further than it is defined by actual bound, is in the power of the Crown, not to adjudicate, but to grant, and hand over to the French. I do not suppose if the Crown were under the necessity of adjudging, that it would adjudge amiss ; but it is in the power of the Crown to grant even its power of adjudging. Where put on the English side, they are put in the power of the laws ; where put on the French side, they are put out of the power of the laws. Let us consider, then, whether it is not worth while to give a clear boundary, and let the man know whether he is or is not an Englishman. I shall take the sense of the Committee upon it. I am as much in earnest as ever I was in my life. I have produced a practical idea ; I can produce practical words.

After a long and desultory conversation, the words proposed by Mr. Burke were inserted. The words—" Until it strike the Ohio ; and along the banks of the said river, westward to the banks of the Mississippi, and northward to the southern boundary of the territory to the Merchants' Adventurers of England trading to Hudson's Bay ; and also all such territories, islands and countries, which have, since the 10th of February, 1763, been made part of the government of Newfoundland, be, and they are hereby, during his Majesty's pleasure, annexed to and made part and parcel of the Province of Quebec"—were next read.

On June 10th, Sir Charles Whitworth reported to the House the amendments which the committee had made to the Bill. The first clause being read, there was much puzzling about settling the boundary line. Mr. Edmund Burke, Mr. Jackson, Mr. Barker, and Sir Charles Whitworth went up stairs, in order to settle it, while the House was supposed to be proceeding upon it. The House continued for at least half-an-hour, doing nothing in the meantime. The difference was, whether the tract of country not inhabited should belong to New York or Canada ? At five o'clock, Mr. Burke returned with the amendments, some of which were agreed to, others

not. The following is the clause, as finally agreed to by the House :

“ That all the territories, islands and countries in North America, belonging to the Crown of Great Britain, bounded on the south by a line from the Bay of Chaleurs, along the islands which divide the rivers that empty themselves into the River St. Lawrence, from those which fall into the sea, to a point in forty-five degrees of northern latitude on the western bank of the River Connecticut, keeping the same latitude directly west, through the Lake Champlain, until, in the same latitude, it meets the River St. Lawrence ; from thence up the eastern bank of the said river to the Lake Ontario ; thence through the Lake Ontario and the river commonly called Niagara ; and thence along by the eastern and south-eastern bank of Lake Erie, following the said bank until the same shall be intersected by the northern boundary granted by the Charter of the Province of Pennsylvania, in case the same shall be so intersected ; and from thence along the said northern and western boundaries of the said Province until the said western boundary strike the Ohio ; but in case the said bank of the said Lake shall not be found to be so intersected, then following the said bank until it shall arrive at that point of the said bank which shall be nearest to the north-western angle of the said Province of Pennsylvania, and thence by a right line to the said north-western angle of the said Province ; and thence along the western boundary of the said Province until it strike the River Ohio ; and along the bank of the said river, westward, to the *banks* of the Mississippi, and northward to the southern boundary of the territory granted to the Merchants' Adventurers of England trading to Hudson's Bay ; and also all such territories, islands and countries which have, since the 10th of February, 1763, been made part of the government of Newfoundland, be, and they are hereby, during his Majesty's pleasure annexed to and made part and parcel of the Province of Quebec, as created and established by the said Royal Proclamation of the 7th of October, 1763.

" Provided always, that nothing herein contained, relative to the boundary of the Province of Quebec, shall in anywise affect the boundaries of any other colony." *

APPENDIX D.

(*Lord Mansfield to the Right Hon. G. Grenville.*)

BLOOMSBURY, Dec. 24, 1764.

DEAR SIR,—Since I saw you, I have heard from the King in general, and afterwards more particularly, but very indistinctly, from some persons who visited me last night, of a complaint concerning a civil government and a judge sent to Canada.

Is it possible that we have abolished their laws and customs and forms of judicature all at once?—a thing never to be attempted or wished. The history of the world don't furnish an instance of so rash and unjust an act by any conqueror whatever, much less by the Crown of England, which has always left to the conquered their own laws and usages, with a change only so far as the sovereignty was concerned. Where other changes have happened, as in Ireland, they have been the work of great length of time, many emergencies, and where there was a pale of separation between the conquerors and the conquered, by their own laws at first,

Berwick, the conquest made by Edward III., and yielded by the Treaty of Bretigny, retained their own municipal laws. Minorca does now. Is it possible that a man *sans aveu*, without knowing a syllable of their language or laws, has been sent over with an English title of magistracy unknown to them, the powers of which office must consequently be inexplicable and unexecutable by their usages?

For God's sake learn the truth of the case, and think of a speedy remedy. I was told last night that the penal statutes of England concerning Papists are to be held in force in Canada.

* This section excluded the English colonists from the St. Lawrence, the Great Lakes and the Mississippi.

The fundamental maxims are that a country conquered, keeps her own laws, till the conqueror expressly gives new.

A colony which goes from hence to settle in a waste country, if they have an express constitution by charter (or so far as that is silent), carries with them such a part of the common law of England as is adapted to and proper for their situation.

A very small part of the common or statute law of England is law, there, by this maxim. Ecclesiastical laws, revenue laws and penal laws, and a thousand other heads, do not bind these by implication, though in force here at the time of their settlement.

Perhaps the principal parts of this report may be untrue ; but I am so startled at it that I cannot help writing to you. You may easily learn from the Board of Trade whether there has been any act from hence to send them over in a lump a new and unknown law.*

I have thought of the observation you made yesterday, from looking into the charters of some of the charter governments.

Though the question does not want this or any other authority, yet it will be a striking attestation to ignorant people, and an unanswerable argument *ad homines* ; and therefore I wish you would employ somebody to look with this view into the origin of their power to tax themselves and raise money at all.

As to the charter and proprietary governments, it can only be found in the letters patent from which it must be derived.

As to the King's commission and instructions to the governors of an early date, which may be found at the Council Office or the Board of Trade, I would particularly look into that of New York, which was taken from the Dutch, and in a few years afterwards changed her master. Their first commission by a King of England is by Charles the Second.

* The remaining part of the letter refers to the right of Parliament to tax the colonies ; but I do not, as it is brief, suppress it.

I am just going out of town for the holidays. I could not help troubling you, for which I hope you will forgive me.

Yours most affectionately,

MANSFIELD.

—*Grenville Paper, vol. 2, p. 476.*

APPENDIX E.

Captain Stirling, who was despatched in 1765 by General Gage to take possession of the posts and settlements of the French in the Illinois country east of the Mississippi, upon his arrival, St. Ange surrendered Fort Chartres, and retired with the garrison of twenty-one men, and a third of the inhabitants of that settlement, to St. Louis, where he exercised the duties of commandant by the general consent of the people, till he was superseded by the Spanish governor, Piernes, in 1770. Upon assuming the government of the country, Captain Stirling published the following proclamation from General Gage, who was at this time the Commander-in-Chief of the British forces in North America :

“ Whereas, by the peace concluded at Paris, the tenth day of February, 1763, the country of Illinois has been ceded to his Britannic Majesty, and the taking possession of the said country of the Illinois by the troops of his Majesty, though delayed, has been determined upon. We have found it good to make known to the inhabitants—

“ That his Majesty grants to the inhabitants of the Illinois, the liberty of the Catholic religion, as has already been granted to his subjects in Canada. He has consequently given the most precise and effective orders to the end that his new Roman Catholic subjects of the Illinois may exercise the worship of their religion according to the rites of the Romish Church, in the same manner as in Canada.

“ That his Majesty, moreover, agrees that the French inhabitants or others, who have been subjects of the Most

Christian King (the King of France), may retire in full safety and freedom wherever they please, even to New Orleans, or any part of Louisiana ; although it should happen that the Spaniards take possession of it in the name of his Catholic Majesty (the King of Spain), and they may sell their estates, provided it be to the subjects of his Majesty, and transport their effects as well as their persons, without restraint upon their emigration, under any pretence whatever except in consequence of debts or of criminal processes.

“ That those who choose to retain their lands and become subjects of his Majesty, shall enjoy the same rights and privileges, the same security for their persons and effects, and the liberty of trade, as the old subjects of the King.

“ That they are commanded by these presents to take the oath of fidelity and obedience to his Majesty, in presence of *Sieur Stirling*, Captain of the Highland Regiment, the bearer hereof, and furnished with our full powers for this purpose.

“ That we recommend forcibly to the inhabitants to conduct themselves like good and faithful subjects, avoiding, by a wise and prudent demeanour, all causes of complaint against them.

“ That they act in concert with his Majesty's officers, so that his troops may take possession of all the forts, and order be kept in the country. By this means alone they will spare his Majesty the necessity of recurring to force of arms, and will find themselves saved from the scourge of a bloody war, and of all the evils which a march of an army into their country would draw after it.

“ We direct that these presents be read, published, and posted up in the usual places.

“ Done and given at head-quarters, New York, signed with our hands, sealed with our seal at arms, and countersigned by our Secretary, this 30th of December, 1764.

“ THOMAS GAGE.

“ By his Excellency, G. MASTURIN ”

APPENDIX F.

(By the King.)

A PROCLAMATION.

GEORGE R.

“Whereas, we have taken into our Royal consideration the extensive and valuable acquisitions in America, secured to our Crown by the late definitive treaty of peace concluded at Paris the 10th of February last ; and being desirous that all our loving subjects, as well of our kingdoms as of our colonies in America, may avail themselves, with all convenient speed of the great benefits and advantages which must accrue therefrom to their commerce, manufactures and navigation, we have thought fit, with the advice of our Privy Council, to issue this our Royal Proclamation, hereby to publish and declare to all our loving subjects that we have, with the advice of our said Privy Council, granted our letters patent under our great seal of Great Britain, to erect within the countries and islands ceded and confirmed to us by the said treaty, four distinct and separate governments, styled and called by the names of Quebec, East Florida, West Florida, and Grenada, and limited and bounded as follows, viz. :

“First, The Government of Quebec, bounded on the Labrador coast by the River St. John, and from thence by a line drawn from the head of that river, through the Lake St. John, to the south end of the Lake Nipissim ; from whence the said line, crossing the River St. Lawrence and the Lake Champlain, in forty-five degrees of north latitude, passes along the islands which divide the rivers that empty themselves into the said river St. Lawrence, from those which fall into the sea ; and also along the north coast of the Baie des Chaleurs, and the coast of the Gulf of St. Lawrence to Cape Rosieres, and from thence crossing the mouth of the River St. Lawrence by the west end of the Island of Anticosti, terminates at the aforesaid River St. John.

“Secondly, The Government of East Florida, bounded on

the westward by the Gulf of Mexico and the Appalachicola river ; to the northward, by a line drawn from that part of the said river where the Chatahouchee and Flint rivers meet, to the source of St. Mary's river, and by the course of the said river to the Atlantic Ocean; and to the east and south by the Atlantic Ocean and the Gulf of Florida, including all islands within six leagues of the sea coast.

“ Thirdly, the Government of West Florida, bounded to the southward by the Gulf of Mexico, including all islands within six leagues of the coast from the River Appalachicola to Lake Pontchartrain ; to the westward, by the said Lake, the Lake Maurpas, and the Rivér Mississippi; to the northward, by a line drawn due east from that part of the Mississippi which lies in thirty-one degrees north latitude, to the River Appalachicola or Chatahouchee ; and to the eastward by the said river.

“ Fourthly, The Government of Grenada, comprehending the island of that name, together with the Grenadines, and the islands of Dominico, St. Vincent and Tobaga.

“ And to the end that the open and free fishery of our subjects may be extended to, and carried on, upon the coast of Labrador and the adjacent islands, we have thought fit, with the advice of our said Privy Council, to put all the coast, from the River St. John's to Hudson's Straits, together with the islands of Anticosti and Madeline, and all other smaller islands lying upon the said coast, under the care and inspection of our Governor of Newfoundland.

“ We have also, with the advice of our Privy Council, thought fit to annex the islands of St John and Cape Breton, or Isle Royale, with the lesser islands adjacent thereto, to our Government of Nova Scotia.

“ We have also, with the advice of our Privy Council afore-said, annexed to our Province of Georgia all the lands lying between the rivers Altamaha and St. Mary's.

“ And whereas, it will greatly contribute to the speedy settling our said new governments, that our loving subjects

should be informed of our paternal care for the security of the liberties and properties of those who are and shall become inhabitants thereof, we have thought fit to publish and declare by this our proclamation, that we have, in the letters patent under our great seal of Great Britain, by which the governments are constituted, given express power and direction to our governors of our said colonies respectively, that, so soon as the state and circumstances of the said colonies will admit thereof, they shall, with the advice and consent of the members of our Council, summon and call General Assemblies within the said governments respectively, in such manner and form as is used and directed in those colonies and provinces in America which are under our immediate government. And we have also given power to the said governors, with the consent of our said councils and the representative of the people, so to be summoned as aforesaid, to make, constitute and ordain laws, statutes and ordinances for the public peace, welfare and good government of our said colonies, and of the people and inhabitants thereof, as near as may be agreeably to the laws of England, and under such regulations and restrictions as are used in other colonies; and, in the meantime, and until such Assemblies can be called as aforesaid, all persons inhabiting in, or resorting to, our said colonies, may confide in our our Royal protection for the enjoyment of the benefit of the laws of our realm of England; for which purpose we have given power under our great seal to the governors of our said colonies respectively, to erect and constitute, with the advice of our said councils respectively, courts of judicature and public justice within our said colonies, for the hearing and determining of all causes, as well criminal as civil, according to law and equity, and as near as may be agreeably to the laws of England; with liberty to all persons, who may think themselves aggrieved by the sentences of such courts, in all civil cases, to appeal, under the usual limitations and restrictions, to us, in our Privy Council.

“ We have also thought fit, with the advice of our Privy

Council as aforesaid, to give unto the governors and councils of our three new colonies upon the continent, full power and authority to settle and agree with the inhabitants of our said new colonies, or to any other person who shall resort thereto, for such lands, tenements and hereditaments, as are now, or hereafter shall be, in our power to dispose of, and them to grant to any such person or persons, upon such terms and under such moderate quit-rents, services and acknowledgments as have been appointed and settled in other colonies, and under such other conditions as shall appear to us to be necessary and expedient for the advantage of the grantees, and the improvement and settlement of our said colonies.

" And whereas, we are desirous upon all occasions to testify our Royal sense and approbation of the conduct and bravery of the officers and soldiers of our armies, and to reward the same, we do hereby command and empower our governors of our said three new colonies, and other our governors of our several provinces on the continent of North America, to grant, without fee or reward, to such reduced officers as have served in North America during the late war, and are actually residing there, and shall personally apply for the same, the following quantities of land, subject at the expiration of ten years to the same quit-rents as other lands are subject to in the Province within which they are granted, as also subject to the same conditions of cultivation and improvement, viz.:

" To every person having the rank of a field-officer, five thousand acres.

" To every captain, three thousand acres.

" To every subaltern or staff-officer, two thousand acres.

" To every non-commissioned officer, two hundred acres.

" To every private man, fifty acres.

" We do likewise authorize and require the governors and commanders-in-chief of all our said colonies upon the continent of North America, to grant the like quantities of land, and upon the same conditions, to such reduced officers of our navy of like rank as served on board our ships of war in

North America at the times of the reduction of Louisburg and Quebec, in the late war, and who shall personally apply to our respective governors for such grants.

“ And whereas it is just and reasonable and essential to our interest and security of our colonies that the several nations and tribes of Indians with whom we are connected, and who live under our protection, should not be molested or disturbed in the possession of such parts of our dominions and territories as, not having been ceded to, or purchased by us, are reserved to them, or any of them, as their hunting grounds ; we do, therefore, with the advice of our Privy Council, declare it to be our Royal will and pleasure that no governor or commander-in-chief in any of our colonies of Quebec, East Florida, or West Florida, do presume, upon any pretence whatever, to grant warrants of survey, or pass any patents for lands beyond the bounds of their respective governments, as described in their commissions ; as also that no governor or commander-in-chief of our other colonies or plantations in America, do presume for the present, and until our further pleasure be known, to grant warrants of survey, or pass patents, for any lands *beyond* the heads or sources of any of the rivers which fall into the Atlantic Ocean from the west or north-west ; or upon any lands whatever which, not having been ceded to, or purchased by us, as aforesaid, are reserved to the said Indians, or any of them.

“ And we do further declare it to be our Royal will and pleasure, *for the present*, as aforesaid, to reserve under our sovereignty, protection and dominion for the *use* of the said Indians, all the lands and territories *not* included within the limits of our said three new governments, or within the limits of the territory granted to the Hudson's Bay Company ; as also all the lands and territories lying to the westward of the sources of the rivers which fall into the sea from the west and north-west as aforesaid ; and we do hereby strictly forbid, on pain of our displeasure, all our loving subjects from making any purchase or settlements whatever, or taking pos-

session of any of the lands above reserved, without our special leave and license for that purpose first obtained.

“ And we do further enjoin and require all persons whatever, who have either wilfully or inadvertently seated themselves upon any lands within the countries above described, or upon any other lands *which, not having been ceded to, or purchased by us*, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such settlements.

“ And whereas, great frauds and abuses have been committed, in the purchasing lands of the Indians, to the great prejudice of our interests, and to the great dissatisfaction of the said Indians ; in order, therefore, to prevent such irregularities for the future, and to the end that the Indians may be convinced of our justice and determined resolution to remove all reasonable cause of discontent, we do, with the advice of our Privy Council, strictly enjoin and require, that no private person do presume to make any purchase from the said Indians, of any lands reserved to the said Indians, within those parts of our colonies where we have thought proper to allow settlement ; but that if at any time any of the said Indians should be inclined to dispose of any of the said lands, the same shall be purchased only for us, in our name, at some public meeting or assembly of the said Indians, to be held for that purpose by the governor or commander-in-chief of our colony respectively within which they shall lie ; and in case they shall lie within the limits of any proprietaries, conformable to such directions and instructions as we or they shall think proper to give for that purpose. And we do, by the advice of our Privy Council, declare and enjoin that the trade with the said Indians shall be free and open to all our subjects whatever, provided that every person who may incline to trade with the said Indians, do take out a license for carrying on such trade, from the governor or commander-in-chief of any of our colonies respectively where such person shall reside, and also the security to observe such regulations as we shall at any time think fit ; by ourselves or commissaries t

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be appointed for this purpose, to direct and appoint for the benefit of the said trade. And we do hereby authorize, enjoin and require the governors and commanders-in-chief of all our colonies respectively, as well as those under our immediate government, as those under the government and direction of proprietaries, to grant such licenses, without fee or reward, taking especial care to insert therein a condition, that such license shall be void, and the security forfeited, in case the person to whom the same is granted, shall refuse or neglect to observe such regulations as we shall think proper to prescribe as aforesaid.

“ And we do further expressly enjoin and require all officers whatever, as well military as those employed in the management and direction of Indian affairs within the territories reserved as aforesaid for the use of the said Indians, to seize and apprehend all persons whatever who, standing charged with treasons, misprisions of treasons, murders or other felonies or misdemeanors, shall fly from justice, and take refuge in the said territory, and to send them under a proper guard to the colony where the crime was committed of which they shall stand accused, in order to take their trial for the same.

“ Given at our Court of St. James's, the seventh day of October, 1763, in the third year of our reign.

“ *God Save the King.*”

APPENDIX G.

EXTRACTS FROM *The Present State of the European Settlements on the Mississippi*, BY CAPTAIN PHILIP PITMAN, 4^{to}, LONDON, 1770.

“ FORT CHARTRES, when it belonged to France, was the Seat of Government of the Illinois. The head-quarters of the English commanding-officer is now here, who, in fact, is the *arbitrary governor* of this country. The fort is an irregular

quadrangle ; the sides of the exterior polygon are 490 feet. It is built of stone, is plastered over, and is only designed as a defence against the Indians. The walls are two feet two inches thick, and are pierced with loop-holes at regular distances, and with two port-holes for cannon in the faces, and two in the flanks of each bastion. The ditch has never been finished. The entrance to the fort is through a very handsome rustic gate. Within the walls is a banquette raised three feet, for the men to stand on when they fire through the loop-holes. The buildings within the fort are—a commandant's and a commissary's house, the magazine of stores, corps de garde and two barracks ; these occupy the square. Within the gorges of the fort are a powder-magazine, a bake-house and a prison, in the lower floor of which are four dungeons, and in the upper, two rooms, and an out-house belonging to the commandant. The commandant's house is thirty-two yards long, and ten broad, &c. The commissary's house (now occupied by officers) is built on the same line as this, and its proportion and the distribution of its apartments are the same. Opposite these are the store-house and the guard-house ; they are each thirty yards long and eight broad. The former consists of two large store-rooms (under which is a large vaulted cellar, a large room, a bed-chamber, and a closet for the store-keeper ; the latter, of a soldiers' and officers' guard-room, a chapel, a bed-chamber, a closet for the chaplain and an artillery store-room. The lines of barracks have never been finished ; they at present consist of two rooms each for officers, and three rooms each for soldiers. They are each twenty feet square, and have betwixt them a small passage. There are five spacious lofts over each building, which reach from end to end ; these are made use of to lodge regimental stores, working and entrenching tools, &c. It is generally believed that this is the most convenient and best-built fort in North America."

In 1756, Fort Chartres was rebuilt by order of the French Government, in view of the war with England. It was then

half-a-mile from the Mississippi. In 1766 it was but eighty yards from the bank. In 1768, Captain Pitman writes :

" The bank of the Mississippi, next the fort, is continually falling in, being worn away by the current, which has been turned from its course by a sand-bank, now increased to a considerable island, covered with willows. Many experiments have been tried to stop this growing evil, but to no purpose. Eight years ago the river was fordable to the island ; the channel is now forty feet deep.

" In the year 1764, there were about forty families in the village near the fort, and a parish church, served by a Franciscan friar, dedicated to Ste. Anne. In the following year, when the English took possession of the country, they abandoned their houses, except three or four poor families, and settled in the villages on the west side of the Mississippi, choosing to continue under the French Government."

In 1772, the channel of the river reached the fort and the wall, and two bastions upon the west side were undermined, and fell, and the British garrison abandoned the place, and Kaskaskia became the Seat of Government for the Illinois country.*

" The Village of Notre Dame de Cascasquias is by far the most considerable settlement in the country of Illinois, as well from its number of inhabitants, as from its advantageous situation.

" Mons. Paget was the first who introduced water-mills in this country, and he constructed a very fine one on the river Cascasquias, which was both for grinding corn and sawing boards. It lies about one mile from the village. The mill proved fatal to him, being killed as he was working in it, with two negroes, by a party of Cherokees, in 1764.

* For a very minute and interesting description of Fort Chartres, see Dr. Beck's *Gazetteer of Illinois*, 1820 : " Over the whole Fort, there is a considerable growth of trees, and in the hall of the houses, there is an oak about eighteen inches in diameter. . . . Trees more than three feet in diameter are within the walls. It is a ruin in the midst of a dense forest, and did we not know its history, it might furnish a fruitful theme for antiquarian speculation.

Buildings are the church and Jesuits' hall chapel adjoining it ; these, as well as the village, are built of stone, and, compared to the world, make a very good appearance. The plantation consisted of two hundred and forty acres of land, a very good stock of cattle, and a plantation was sold by the French commandant, after it had been ceded to the English, for the Crown, in consequence of the suppression of the Order.

M. de la Riviere was the purchaser, who is the richest of the subjects of this country. He keeps eighty slaves ; he sends eighty-six thousand weight of flour to the King's store, which was only a part of the harvest he reaped in

Five families reside in this village, besides merchants, French people and slaves. The fort, which was burnt down in October, 1766, stood on the summit of a high rock above the village, and on the opposite side of the Koskasquias river. It was an oblongular quadrangle, of which the anterior polygon measured two hundred and ninety feet by one hundred and fifty-one feet. It was built of very thick squared timber, and dovetailed at the angles. An officer and twenty soldiers are quartered in the village. The officer governs the inhabitants, under the direction of the commandant at Chartres. Here are also two companies of militia."

"LA PRARIE DE ROCHES is about seventeen miles from Cascasquias. It is a small village, consisting of twelve dwelling houses, all of which are inhabited by as many families. Here is a little chapel, formerly a chapel-of-ease to the church at Fort Chartres. The inhabitants here are very industrious, and raise a great deal of corn, and every kind of stock. The village is two miles from Fort Chartres. It takes its name from its situation, being built under a rock that runs parallel with the river Mississippi, at a league distance, for forty miles up. Here is a company of militia, the captain of which regulates the police of the village."

" SAINT PHILLIPPE is a small village about five miles from Fort Chartres, on the road to Kaoquias. There are about sixteen houses and a small church standing. All the inhabitants, except the captain of the militia, deserted it, in 1765, and went to the French side. The captain of the militia has about twenty slaves, a good stock of cattle and a water-mill for corn and planks. This village stands in a very fine meadow, about one mile from the Mississippi."

" The village of SAINTE FAMILLE DE KAOQUIA (Cahokia) is generally reckoned fifteen leagues from Fort Chartres, and six leagues below the mouth of the Missouri. It stands near the side of the Mississippi, and is marked from the river by an island of two leagues long. The village is opposite to the centre of this island ; it is long and straggling, being three-quarters of a mile from one end to the other. It contains forty-five dwelling-houses, and a church near its centre. The situation is not well chosen, as in the floods it is generally overflowed two or three feet. This was the first settlement on the Mississippi. The land was purchased of the savages by a few Canadians, some of whom married women of the Kaoquias nation, and others brought wives from Canada, and then resided there, leaving their children to succeed them. The inhabitants of this place depend more on hunting, and their Indian trade, than on agriculture, as they raise scarcely corn enough for their own consumption ; they have a great plenty of poultry, and good stocks of horned cattle. The Mission of St. Sulpice had a very fine plantation here, and an excellent house built on it. They sold this estate, and a very good mill for corn and planks, to a Frenchman who chose to remain under the English Government. They also disposed of thirty negroes, and a good stock of cattle to different people in the country, and returned to France in 1764. What is called the Fort, is a small house standing in the centre of the village. It differs nothing from the other houses, except in being one of the poorest. It was formerly enclosed with high palisades, but these were torn down and burnt. Indeed, a fort at this place could be of little use."

APPENDIX H.

EXTRACTS FROM THE DIARY OF COLONEL CROGHAN,
DEPUTY-SUPERINTENDENT OF THE NORTHERN INDIAN
DEPARTMENT.

Colonel George Croghan, the Commissioner of Sir William Johnson, went to the west to learn the disposition of the French inhabitants, and to secure, if possible, their adhesion to the English interest ; and to prevent a second Indian war. He left Fort Pitt on the 15th of May, 1764, and was taken prisoner on the 8th of June by a party of Indians, and was carried to VINCENNES. He says : " On my arrival there, I found a village of about eighty or ninety French families settled on the *east* side of this river, being one of the finest situations that can be found. The country is level and clear, and the soil very rich, producing wheat and tobacco. I think the latter preferable to that of Maryland or Virginia. The French inhabitants hereabouts are an idle, lazy people, a parcel of renegaders from Canada, and are much worse than the Indians. They took a secret pleasure at our misfortunes, and the moment we arrived, they came to the Indians, exchanging trifles for their valuable plunder. As the savages took from me a considerable quantity of gold and silver in specie, the French traders extorted two half-johannes from them for one pound of vermilion.

" Here is likewise an Indian village of the Pyankeshaws, who were much displeased with the party that took me, telling them, ' our chiefs and your chiefs have gone to make peace ; and you have begun a war, for which our women and children will have reason to cry.' From this post, the Indians permitted me to write to the Commander, at Fort Chartres, but would not suffer me to write to anybody else (this, I apprehend, was a precaution of the French, lest their villainy should be perceived too soon), although the Indians had given me permission to write to Sir William Johnson and Fort Pitt

on our march, before we arrived at this place. But immediately after our arrival, they had a private council with the French, in which the Indians urged (as they afterwards informed me) that as the French had engaged them in so bad an affair, which was likely to bring a war on their nation, they now expected a proof of their promise and assistance. They delivered the French a scalp and a part of the plunder. and wanted to deliver some presents to the Pyankeshaws, but they refused to accept of any, and declared that they would not be concerned in the affair. This last information I got from the Pyankeshaws, as I have been well acquainted with them several years before this time.

"POST VINCENT is a place of great consequence for trade, being a fine hunting country all along the Ouabache (Wabash), and too far for the Indians, which reside hereabouts, to go either to the Illinois or elsewhere to fetch their necessaries.

"*June 23.*— . . . The distance from Post Vincent to OUICATANON is 210 miles. This place is situated on the Ouabache. About fourteen French families are living in the Fort, which stands on the north side of the river. The Kickapoos and Musquattinees, whose warriors had taken us, live nigh the fort, on the same side of the river, where they have two villages; and the Ouicatanons have a village on the south side of the river. At our arrival at this post, several of the Wawcattonans (or Ouicatanons), with whom I had been formerly acquainted, came to visit me, and seemed greatly concerned at what had happened. They went immediately to the Kickapoos and Musquattinees, and charged them to take the greatest care of us till their chiefs should arrive from the Illinois, where they were gone to meet me some time ago, and who were entirely ignorant of this affair, and said the French had spirited up this party to go and strike us.

"The French have a great influence over these Indians, and they never fail in telling them many lies to the prejudice of his Majesty's interest, by making the English nation odious and hateful to them. I had the greatest difficulties in remov-

ing these prejudices. As these Indians are a weak, foolish and credulous people, they are easily imposed on by a designing people, who have led them hitherto as they pleased. The French told them that as the Southern Indians had for two years past made war on them, it must have been at the instigation of the English, who are a bad people. However, I have been fortunate enough to remove their prejudice, and in a great measure their suspicions against the English. The country hereabouts is exceedingly pleasant, being open and clear for many miles, the soil very rich and well watered, all plants have a quick vegetation, and the climate very temperate through the winter. This post has always been a very considerable trading place. The great plenty of furs taken in this country, induced the French to establish this post, which was the first upon the Ouabache, and by a very advantageous trade, they have been richly recompensed for their labour.

" *August 1.*—The TWIGTWEE village is situated on both sides of a river called the St. Joseph. This river, where it falls into the Miami river, about a quarter of a mile from this place, is about one hundred yards wide, on the east side of which stands a stockade fort, somewhat ruinous.

" The Indian village consists of about forty or fifty cabins, besides nine or ten French houses, a runaway colony from Detroit, during the Indian war ; they were concerned in it, and being afraid of punishment, came to this post, where, ever since, they have spirited up the Indians against the English. All the French residing here are a lazy, indolent people, fond of breeding mischief and spiring up the Indians against the English, and should by no means be suffered to remain here. The country is pleasant, the soil rich and well watered. After several conferences with these Indians, and their delivering me up all the English prisoners they had, on the 6th of August we set out for Detroit, down the Miami river, in a canoe.

" *August 17.*—In the morning we arrived at the fort, which

is a large stockade, inclosing about eighty houses ; it stands close on the north side of the river, on a high bank, commands a very pleasant prospect for nine miles above and nine miles below the fort ; the country is thickly settled with French ; their plantations are generally laid out about three or four acres in breadth on the river, and eighty acres in depth ; the soil is good, producing plenty of grain. All the people here are generally poor wretches, and consist of three or four hundred French families, a lazy, idle people depending chiefly on the savages for their subsistence ; though the land, with little labour, produces plenty of grain, they scarcely raise as much as will supply their wants, in imitation of the Indians, whose manners and customs they have entirely adopted, and cannot subsist without them. The men, women and children speak the Indian tongue perfectly well. In the last Indian war, the most part of the French were concerned in it (although the whole settlement had taken the oath of allegiance to his Britannic Majesty) ; they have therefore great reason to be thankful to the English clemency in not bringing them to deserved punishment. Before the late Indian war, there resided three nations of Indians at this place—the Putawatimes, whose village was on the west side of the river, about one mile below the fort ; the Ottawas, on the east side, about three miles above the fort ; and the Wyandottes, whose village lies on the east side, two miles below the fort. The former two nations have removed to a considerable distance, and the latter still remain where they were, and are remarkable for their good sense and hospitality. They have a particular attachment to the Roman Catholic religion ; the French, by their priests, have taken uncommon pains to instruct them.”

Rogers says, in his *Account of North America* : “ When I took possession of the country (Detroit) soon after the surrender of Canada, they were about 2,500 in number, there being near 500 that bore arms, and near 300 dwelling-houses.” (p. 168.)

"In 1764 there were but men enough to form three companies of militia."—Mante's *History of the War in North America*—p. 525. ✓

In 1768, the census, when taken, showed the population to be 572. ✓


Bancroft says that he has a MS. in his possession containing the recollections of Madame Catherine Thibeau, in which it is stated that "about sixty French families in all when the English took possession of the country; not more than eighty men at the time. Very few farms; not more than seven or eight farms settled." ✓

"July 18, 1765.—I set off for the Illinois with the chiefs of all those nations, when by the way, we met with Pondiac, together with the deputies of the Six Nations, Delawares and Shawanees, which accompanied Mr. Frazer and myself down the Ohio, and also deputies with speeches from the four nations living in the Illinois country, to me and Six Nations, Delawares and Shawanees, on which we returned to Onitanon, and there held a conference, in which I settled all matters with the Illinois Indians, Pondiac and they agreeing to everything the other nations had done. . . . The French had informed them that the English intended to take their country from them, and give it to the Cherokees to settle on, and that if ever they suffered the English to take possession of their country, they would make slaves of them, that this was the reason of their opposing the English hitherto from taking possession of Fort Chartres. . . . they desired that their Father, the King of England, might not look upon his taking possession of the forts which the French had formerly possessed, as a title for its subjects to possess their country, as they had never sold any part of it to the French, and that I might rest satisfied that whenever the English came to take possession, they would receive them with open arms."—*Croghan's Diary*; also *N. Y. Hist. Doc. vol. 8, p. 781*.

THOUGHTS ON INDIAN AFFAIRS, BY COLONEL BROAD-STREET.—*Extract.*

"I am assured, by persons lately from Illinois, that exclusively of the French garrison there, the inhabitants are six hundred fighting men, have one thousand negroes, well accustomed to the use of arms, averse to our taking of the country, and having painted us in such colours to the numerous savages near them, that the latter will certainly endeavour to prevent the troops getting there by the Mississippi, even should the Indians near the sea allow them to pass, which they think they will not, unless well paid for it, which will not answer, what may perhaps be expected. They add that this is their opinion also, that all attempts to get possession of the Illinois with less than three thousand men will fail, and that those troops should go down the Ohio river, and that the expedition be carried on with such secrecy, that they may enter the Mississippi ninety miles below Fort Chartres, before the inhabitants can have intelligence of it, and time to apprize all the savages."—*N. Y. Hist. Doc., vol. 8, p. 693.*

These statements differ very widely. This difference may in some measure be accounted for by remembering that the men were nearly all fur-traders, and that after the war with Pontiac was over, many went to Mackinac, to Nipigon, Grand Portage, Green Bay and other points, to carry on the trade of the north-west. Some families went beyond the Mississippi, to avoid becoming subjects of Great Britain, not knowing that France had ceded Louisiana to Spain.



APPENDIX I.

[This document seems to have governed the conduct of the Duc de Choiseul in his propositions first made to Mr. Pitt; and I append as serving to elucidate that correspondence.]

Extract.—Paris Documents XVII. (page 1134.)

MEMOIR ON THE BOUNDARIES OF CANADA.

By M. DUMAS.

'Tis supposed that the plenipotentiaries named for the future Congress, are incapable of adopting the frivolous ideas entertained in France respecting our possessions in Canada; statesmen have notions different from the simple vulgar. The French are too volatile and too superficial to trouble themselves about the future; but Ministers whom wisdom has selected and ability directs, will of themselves observe that the interests of commerce, the progress of navigation, the good of the State and the King's glory necessarily require that the restitution of Canada be laid down as a preliminary in the Treaty of Peace.

In more favourable conjunctures, we would be justified in demanding of the English, damages corresponding to the enormous depredation of our marine, as well commercial as national; but the circumstances which will exist at the conclusion of the peace, are to decide the sacrifices we shall be obliged to make, or the advantages which are possibly to result therefrom. Commerce has changed the face of Europe; it is now evident that, in the long run, the more commercial nation will become the more powerful.

We can no longer dispense with America, without falling sensibly from our state of splendour.

On the restitution of Canada depends the fate of the rest of our colonies.

These principles, clearer than the day, once admitted, that restitution ought to form the basis and foundation of the Treaty of Peace.

But will the work of our Ministers be durable ? For want of local knowledge, will they be in a condition to manage beneficially the interests of the King and nation in this regard ? Will they prevent the subterfuges in which English trickery will not fail to envelop them ? If the English desire peace, do they desire it to be lasting ? Will they renounce that system of maritime despotism which constitutes the sole object of their policy ? Will they not preserve a constant hankering to render themselves masters of the whole of America ? And will they not allow it to appear when we shall be least on our guard ? Incapable of accomplishing that project now, in consequence of the exhaustion of their finances, will they not renew it at another time ? In front of an enemy so active, so ambitious, so enterprising, conjectures are as good as demonstrations ; the past cannot render us too cautious for the future.

By a fatality which cannot be comprehended, the English were better acquainted than we before the war, with the topographical map of our possessions. Aided by similar help, what advantage do they not possess to cheat us ? To this object, then, should be directed all the prudence and sagacity of our plenipotentiaries.

BOUNDARIES.

I limit their labours, respecting Canada, to four general objects :

1st. The entire property of both shores of the River and Gulf of St. Lawrence.

2nd. The property of the lakes and rivers which form the natural communication between Canada and Louisiana ; they consist of Lake Ontario, Lake Erie, and the Ohio.

3rd. That neither of the two nations can form any establishments on the rivers watering the possessions of the other.

4th. That both colonies shall exist and increase by population, without covering their frontiers with advanced posts, which is a principle of jealousy, suspicion and distrust ; an

occasion always at hand, or a pretext often specious, for a rupture between the two nations.

As for the first article—to cede to the English, as they pretend the entire peninsular of Acadia is to reduce ourselves evidently to a precarious possession. That peninsula is susceptible of an immense population ; its position is one of the most advantageous, both for the erection of fortifications, and of posts there. Solid settlements of every description can be found there ; agriculture can be followed with the greatest success. In vain would France flatter herself that she should preserve in peace the possession of the mouth of the river, if the English obtained the entire cession of that peninsula. Already masters of Newfoundland, they should grant us the property of a country whereof they would guard the entrance.

The peace will scarcely be signed, when the activity of that ambitious people will be revived ; soon will they be seen establishing themselves on the north side of that peninsula, and neglecting the remainder, if necessary, in order to transport to that quarter all their industry in favour of plantations.

What service would not the plenipotentiaries be rendering the State, if by their ability, they would induce the English to consent to a division of that peninsula, so that France should preserve the property of the northern part, from Cape Canso to Minas ?

But if their zeal become useless, if English firmness leave no hope on that point, they ought to be prepared to rather break all conference, than to give up an inch of ground on that continent. 'Tis evident that our colony would lose thereby all communication with the metropolis ; we should no longer possess the free entrance of the river, except so far as the English would think proper. The lines of demarcation which separate the respective possessions on the map, annexed to this memoir,* are drawn in accordance with the

* The map is wanting.—ED.

largest sacrifices that it is possible for France to make. 'Tis for the plenipotentiaries to take advantage of favourable events, to obtain the best terms ; but in all possible reverses, 'twill be more advantageous for the King and the State to renounce Canada, and consequently Louisiana, which cannot exist without it, than to cede an inch of territory beyond that division.

The blue colour indicates the French possessions.

The red indicates the English possessions.

The green, what can be ceded towards Hudson's Bay—should events require France to make further additional sacrifices.

I have said, and repeat it, Louisiana cannot exist for us without Canada. But 'tis more advantageous for France promptly to cede these two colonies to the English, than to accept conditions worse than those indicated by the lines drawn on that map.

On this hypothesis, let the river Pentagouet be the boundary of the English possessions on the continent, on the N.E., and let them be precluded from settling only the right bank.

Let the River St. John bound the French settlements, and let them be precluded from settling only the left bank.

The territory between these two rivers shall perpetually remain neutral and undivided between both nations, as marked on the map by the yellow colour.

The second object of the labour of our plenipotentiaries relative to Canada, regards the communication of that colony with Louisiana. The projects of the English would be accomplished beyond their hopes, were the freedom of that communication not stipulated and solidly established by the treaty of peace ; 'twould be separating two colonies, which cannot sustain themselves except by their immediate affinity. Now that communication can occur only by the Ohio, every other route renders it very difficult, often even impracticable. 'Tis essential, then, to insist *strongly on the entire possession of the Ohio.*

That river, navigable throughout all its course for very large craft, threatens Louisiana afar, and combines the advantage of distance in concealing preparations, with that of extreme rapidity of current for promptitude of execution.

To make the Ohio the boundary of the respective colonies, is to surrender it entirely to the English. In fact, already the English population is advancing towards that river; it has only one step to take to clear the Apalachies, and that step would be taken on the day after the signing of the treaty. The left bank of the Ohio would be under English cultivation in less than four years, whilst our population would not reach that point in the space of a century. Who does not perceive in that explanation the approaching and inevitable fall of Louisiana?

The entire possession of the Ohio cannot, then, be too much insisted on, the Apalachies constituting the limits; but if events were such as to force us to give way on that important article, the only middle course to adopt is marked on the map by the yellow colour, viz., to leave the course of that river neutral, unsettled, without ownership, free to both nations to convey on it their goods for movable trade, with express reservation to France of the communication between both those colonies.

The possession of lakes Ontario and Erie, which is the consequence of that communication, is a point of the greatest interest to us, the rather as for want thereof, those lakes assure another passage by the Miamis and Ouabache rivers, more difficult, more uncertain, but which furnishes nevertheless a resource in times of misfortune. I admit that very favourable events would be required to reduce the English to abandon the south shore of Lake Ontario, of which they are a long time in possession, through Fort Chouequen—a possession usurped, but constant, and, as it were, unopposed; an empty protest by the French Government, when the first foundations of that post were laid, is the only contradiction they have experienced.

If circumstances were such, on the conclusion of the peace, as that France had to make good its advantages, that would be the moment to protest against that usurpation. This important object merits the greatest attention of our plenipotentiaries. It is sufficient to consider the course of the waters to perceive that that lake commands the whole of Canada. General Amherst has found no route more certain for invasion ; the event has not over-justified his principles and mind.

If, on the contrary, we are reduced to take back Canada in the same condition that we possessed it before the war, France might consent to confine its cultivated settlements to the north shore of Lake Ontario, leaving the south shore free from the Bay of Niacuré to the River Niagara.

The English would preserve the freedom of conveying their merchandise for movable trade to the mouth of the Chouequen river, and could extend themselves only to the Onondaga river on one side, and as far as the River à la Famine on the other.

But nothing should make France give up the property of the soil, so that the freedom of trade granted to the English could not at any time invest them with a title thereto.

Let their possessions be always confined to the heads of the rivers by which they are watered, and let the height of land be constantly the limit between the two nations.

The entire possession of Lake Erie ought to belong to France incontestably up to the head waters of the streams that empty into that lake on the south side ; the rivers flowing towards the Ohio are included in the neutrality proposed by that river.

The third object proposed at the head of this memoir, will be rendered clearer by a brief reflection.

The English are ten to our one in America. But if passing the height of lands, we should push our posts as far as the heads of the rivers which water the English colonies, all their superiority in numbers, means and resources would not

guarantee them against an invasion when it should please us to attempt it.

He who meditates an expedition, prepares it secretly, and when 'tis time to put it in execution, if he have in his favour the current of the stream which conveys him with rapidity, he surprises his enemy, and infallibly succeeds ; the same is not the case where the aggressor has to ascend the rivers, has portages to make, lakes to traverse and mountains to pass. The immense preparations necessary to be made for that purpose discover the movement, and the slowness of the execution affords time to the menaced province to place itself in a state of defence.

The English Colonies are in the latter position in respect to Canada, and Canada would be in the first relative to the English Colonies were the English to advance their settlements on Lake Champlain, Lake Ontario, or the Ohio,

I am fully convinced, and every man of sense who is conversant with the manner in which war can be carried on in that country, will agree with me that all the resources of the State will never preserve Canada if the English are once settled at the heads of our rivers. 'Tis, again, one of the conditions that must never be consented to. Should peace be concluded under unfavorable circumstances to France, I point out the only middle course to be adopted, which is the neutrality of certain districts ; such might Lake St. Sacrament be without great prejudice to us, provided the English confine their settlements to the sources of the waters flowing into the River of Orange.

Come we now to the fourth principle :

I know nothing more useless in that country than forts to cover the frontiers ; they are equally a burthen to both nations, which have an equal interest in demolishing them ; they are, in time of peace, a source of useless expense, and experience has demonstrated that, in time of war, they would be good for nothing. These frontier posts are adapted only to create difficulties, to afford umbrage and sometimes furnish pretexts for a rupture.

They would favour that nation which would preserve the the desire to seize the possessions of the other. By aid of the stand-points, it would pounce on its enemy when least expected, whilst every considerable enterprise becomes more difficult, more tedious, were they no longer in existence. If entrepôts must be established, the step forward is a cry "To arms."

The French plenipotentiaries will labor usefully for that Colony, and more profitably still for the Royal Treasury, if they agree with the British Ministers on not preserving any post on the frontiers on either side; thus, Couequen and Niagara will be demolished.

That does not exclude useful settlements in the interior of the possessions, either relatively to trade or otherwise, which each nation is to be at liberty to direct, according to its interests; but merely on what is called frontier, an outlet which may tend to supply means of an invasion.

To place matters at the worst, if the fortune of war be unfavourable to France, this campaign, and peace be concluded in an unpropitious moment for us :

If, in order to obtain the conditions I propose, we be under the necessity of making new sacrifices in any part of Canada, the least dangerous for us would be to allow more extent to the English possessions in the direction of Hudson's bay. Let us cede to them the whole of Lake Superior, rather than one inch of territory in the south part, at this side the height of land or the Apalachies. That sacrifice which is to be made by France at the most critical moment, is marked by the green colour on the map.

Anything beyond those lines of demarcation, and France must give up Canada, inasmuch as it is evident she cannot preserve it; moreover, to maintain ourselves in that state, the Minister essentially and constantly occupy himself therewith; but above all things, must men be carefully selected, to whom the government, the police and finances are to be confided.

Otherwise we shall labour for our enemies. Canada, bathed

in the blood of our unfortunate Colonists, will soon be the appendage of the English. Our clearances, our settlements, our villages, will be so much fruit to be gathered by them when they have arrived at maturity.

Let the height of land and the Apalachies be the limits between the two peoples! Nature appears to have marked them expressly.

The caprice of man cannot change that barrier, always permanent, and always ready to protest against the usurper. People aspire to a *factitious* peace when they seek to establish it on arbitrary lines which the revolutions of time or the interests of men can destroy. 'Tis, perhaps, a fault into which have fallen our ablest negotiators, yet 'tis the most important object of a treaty of peace, since it destroys or foment the fatal germ which is the occasion of most wars. The height of lands and the Apalachies once determined on as the line of separation between the two Colonies, the modifications, the compromises I propose neutralizing certain districts, may be admitted according as circumstance will be more or less favourable to France, when peace will be concluded.

One reflection more remains to be submitted, which, although not bearing directly on the boundaries, is, nevertheless, very intimately connected with them.

Considering the enormous expense entailed on us by the service of Indians in the war, I have always thought that the King would maintain at much less expense in Canada, a permanent corps of troops, capable of defending it at all times, and when I have weighed, with reflection, the utility of their assistance, I have found it to be only one of opinion and prejudice. But this prejudice is founded on the terror inspired by their cruelty and barbarity in their customs; it consequently will preserve its power.

This terror will always be very useful to the nation which will be best able to manage the alliance and attachment of those people. We possess one real advantage over the English in this regard; let us carefully avoid doing it the smallest

damage by any convention with our enemies which would cause the Indians to suspect our alliance and good faith. However simple and natural such an accord might be, the English would not fail to present it to the Indians in the light that would render it odious to them. These people are proud, jealous, suspicious, and vindictive ; an appearance of defection on our part, after all the blood they have poured out in our defence, would render these irreconcilable to us from generation to generation, and that would be the greatest of misfortunes for both our Colonies.

Our plenipotenaries ought to be distrustful on this point. I am fully convinced that the British Ministers will set snares for them on this point, which is of more importance for them in America than the gain of many battles.

As for the rest, a Governor-General, instructed and attentive, will know how to maintain the alliance of all the people of this continent in peace as in war, without those enormous expenses which knavery conducts ignorance tolerates.

(Signed) DUMAS.

Paris, 5th April, 1761.

DEFINITIVE TREATY OF PARIS, 1763.

Article 4.—His most Christian Majesty renounces all pretensions which he has heretofore formed, or might form, to Nova Scotia or Acadia in all its parts, and guarantees the whole of it, and with all its dependencies, to the King of Great Britain; moreover, his most Christian Majesty cedes and guarantees to his said Britannic Majesty, in full right, Canada, with all its dependencies, as well as the Island of Cape Breton, and all the other Islands and coasts in the Gulf and River St. Lawrence, and in general, everything that depends on the said countries, lands, islands and coasts, with the sovereignty, property, possession and all rights, acquired by treaty or otherwise, which the most Christian King and the Crown of France have had till now over the said countries, islands, lands, places, coasts and their inhabit-

ants, so that the most Christian King cedes and makes over the whole to the said King and to the Crown of Great Britain, and that in the most ample form without restriction, and without any liberty to depart from the said cession and guaranty under any pretence, or to disturb Great Britain in the possessions above mentioned. * * * *

Article 7.—In order to re-establish peace on solid and durable foundations, and to remove forever all subject of dispute with regard to the limits of the British and French territories on the continent of America; it is agreed, that, for the future, the confines between the Dominions of his Britannic Majesty and those of his most Christian Majesty, in that part of the world shall be fixed irrevocably by a line drawn along the middle of the Mississippi from its source to the River Iberville, and from thence by a line drawn along the middle of this river and the lakes Maurepas and Ponchartrain to the sea; and for this purpose the most Christian King cedes in full right, and guarantees to his Britannic Majesty the river and port of the Mobile, and everything which he possesses on the left side of the River Mississippi, except the Town of New Orleans, and the island in which it is situated, which shall remain to France; provided that the navigations of the River Mississippi shall be equally free as well to the subjects of Great Britain as to those of France, in its whole breadth and length from its source to the sea, and expressly that part which is between the said Island of New Orleans and the right bank of the river, as well as the passage both in and out of its mouth. It is further stipulated, that the vessels belonging to the subjects of either nation shall not be stopped &c., &c.

In the negotiations which took place between France and Great Britain in the year 1761, in reference to the cession of Canada the following propositions were made:—On the 15th of July, 1761, France proposed:—

I. The King cedes and guarantees Canada to the King of England, such as it has been, and in right, ought to be possessed by France, without restriction, and without the liberty

of returning upon any pretence whatever against this cession and guaranty, and without interrupting the Crown of England in the entire possession of Canada.

II. The King in making over his full right of Sovereignty over Canada to the King of England, annexes four conditions to the cession. *First*, that the free exercise of the Roman Catholic religion shall be maintained there, and that the King of England will give the most precise and effectual orders that his new Roman Catholic subjects may, as heretofore, make public profession of their religion, according to the rites of the Roman Church.

Secondly, That the French inhabitants or others, who have been subjects of the King in Canada, may retire into the French Colonies with all possible freedom and security; that they may be allowed to sell their effects and to transport their property as well as their persons, without being restrained in their emigration, on any pretence whatever (except for debt); and the English Government shall engage to procure them the means of transportation at as little expense as possible.

Thirdly, That the limits of Canada, with regard to Louisiana, shall be clearly and firmly established, as well as those of Louisiana and Virginia, in such manner that after the execution of peace there may be no more difficulties between the two nations, with respect to the construction of the limits with regard to Louisiana, whether with respect to Canada, or the other possessions of England.

N. B.—M. Bussy has a memorial on the subject of the limits of Louisiana, which gives him power to come to a final treaty on that article with the Ministry of his Britannic Majesty.

Fourthly, that the liberty of fishing, and of drying their cod-fish may, on the banks of Newfoundland, be confirmed to the French as heretofore; and as this confirmation would be illusory, if French vessels had not a shelter in those parts appertaining to their nation, the King of Great Britain, in consideration of the guaranty of his new conquests, shall restore Isle Royal, or Cape Breton, to be enjoyed by France

in entire Sovereignty. It is agreed to fix a value on this restitution, that France shall not, under any denomination whatever, erect any fortifications on the island, and shall confine herself to maintain civil establishments there, and the port for the convenience of the fishing vessels landing there.

On the 27th of July 1761, the answer of the British Court to the memorial of French propositions was forwarded to Mr. Hans Stanley, the English Envoy at Paris. The first two of which relate to Canada are the following:—

I. His Britannic Majesty will never recede from the entire and total cession on the part of France, of the Isle of Cape Breton, and of all the other Islands in the Gulf or in the River of St. Lawrence, with the right of fishing, which is inseparably incident to the possession of the aforesaid coasts, and of the canals or straits which lead to them.

II. With respect to fixing the limits of Louisiana with regard to Canada, or the English possessions situate on the Ohio, as also on the coast of Virginia, it can never be allowed that whatever does not belong to Canada shall appertain to Louisiana, nor that the boundaries of the last province should extend to Virginia, or to the British possessions on the borders of the Ohio; the nations and countries which lie intermediate, and which form the true barriers between the aforesaid provinces, not being proper, on any account, to be directly or by necessary consequence ceded to France, even admitting them to be included in the limits of Louisiana,

ULTIMATUM OF FRANCE IN REPLY TO THAT OF ENGLAND,
REMITTED TO THE DUC DE CHOISEUL BY MR. STANLEY.

I. The King consents to cede Canada in to England the most exclusive manner, as specified in the Memorial of Propositions, but his Majesty will not recede from the conditions which he has annexed to the same memorial, relative to the Catholic religion, and to the power, facility and liberty of emigration for the ancient subjects of the King. With regard to the Fishery in the Gulf of St. Lawrence the King means to

maintain the immemorial right which his subjects have of fishing in the said Gulf; and of drying their fish on the banks of Newfoundland, as it was agreed by the Treaty of Utrecht. As this privilege would be granted in vain if the French vessels had not some shelter appertaining to France in the Gulf, his Majesty proposed to the King of Great Britain the restitution of the Island of Cape Breton; he again proposes either that Island of St. John, (Prince Edward's) or such other port without fortifications, in the Gulf, or within reach of the Gulf, which may serve the French as a shelter, and secure to France the liberty of fishing, from whence his Majesty has no intention to recede.

II. The King has, in no part of his Memorial of propositions, affirmed that all which did not belong to Canada, appertained to Louisiana; it is even difficult to conceive such an assertion could be advanced. France, on the contrary, demands that the intermediate nations between Canada and Louisiana, as also between Virginia and Louisiana, shall be considered as neutral nations, independent of the Sovereignty of the two Crowns, and serve as a barrier between them. If the English Minister would have attended to the instructions of M. Bussy on this subject, he would have seen that France agreed with England as to this proposition.

THE ANSWER OF ENGLAND TO THE ULTIMATUM OF FRANCE,
17th August, 1761.

I. The King will not desert his claim to the entire and total cession of all Canada and its *dependencies*, without any new limits or exceptions whatsoever; and likewise insists on the complete cession of the Island of Cape Breton and of the other Islands in the Gulf and River of St. Lawrence.

Canada, according to the line of its limits as traced by the Marquis de Vaudreuil himself, when that governor surrendered the said province by capitulation to the British General, Sir J. Amherst, comprehends on one side the lakes Huron, Michigan and Superior: and the said line drawn to the Red

Lake takes in, by a serpentine progress, the River Ouabachi, (Wabash) as far as its junction with the Ohio, and thence extends itself along the latter river as far inclusively as its influx into the Mississippi.

It is in conformity to this state of the limits, made by the French Governor, that the King claims the cession of Canada, a province which the Court of France moreover has offered anew by their *Ultimatum* to cede to his Britannic Majesty, in the most extensive manner, as expressed in the *Memorial of Proposition of Peace* of the 13th July.

As to what concerns the public profession and exercise of the Roman Catholic religion in Canada, the new subjects of his Britannic Majesty shall be maintained in that privilege without interruption or molestation ; and the French inhabitants, or others who may have been subjects of the Most Christian King in Canada, shall have full liberty and power to sell their effects, provided they dispose of them to the subjects of his Britannic Majesty, and to transport their property, as well as their persons, without being restrained from their emigration under any pretence whatever (unless in case of debt, or for the breach of the criminal laws), it being always understood that the time granted for the said emigration shall be limited to the space of one year, to be computed from the day of the ratification of the Definitive Treaty.

II. As to what respects the line to be drawn from Rio Perdido, as contained in the note remitted by M. Bussy, of the 18th of this month, with regard to the limits of Louisiana, his Majesty is obliged to reject so unexpected a proposition, as by no means admissible, in two respects :

1. Because the said line, under colour of fixing the limits of Louisiana, annexes vast countries to that province which, with the commanding posts and forts, the Marquis de Vaudreuil has by the most solemn capitulation incontestably yielded into the possession of his Britannic Majesty, under the description of Canada, and that consequently however contentious the pretensions of the two Crowns

may have been before the war, and particularly with respect to the course of the Ohio, and the territories in that part since the surrender of Canada, and the line of its limits has been traced as aforesaid by the Marquis de Vaudreuil ; all those opposite titles are united, and become valid without contradiction, to confirm to Great Britain, with all the rest of Canada, the possession of those countries on that part of the Ohio which have been heretofore contested.

2. The line proposed to fix the bounds of Louisiana, cannot be admitted, because it would comprise in another part, on the side of the Carolinas, very extensive countries and numerous nations, which have always been reputed to be under the protection of the King, a right which his Majesty has no intention of renouncing ; and then the King, for the advantage of peace, might consent to leave the intermediate countries under the protection of Great Britain, and particularly the Cherokees, the Creeks, the Chicasaws, the Choctaws, and another nation, situate between the British settlements and the Mississippi.

THE LAST MEMORIAL OF FRANCE TO ENGLAND,

September 9, 1761.

I. The King has declared in his first Memorial, and in his Ultimatum, That he will cede and guarantee to England the possession of Canada, in the most ample manner. His Majesty persists in that offer, and without discussing the line of its limits marked in a map presented by Mr. Stanley, as that line on which England rests its demand, is without doubt the most extensive bound which can be given to the cession, the King is willing to grant it.

His Majesty has annexed four conditions to his guaranty ; it seems that England agrees to them. The King only conceives that the term of one year for the sale of the French effects, and for the emigration, is too short, and his Majesty

desires that it may be agreed to extend the term of one year to eighteen months at least.

As the Court of England has added to the first article of their answer to the entire and total cession of Canada as agreed between the two Courts, the word *dependencies*, it is necessary to give a specific explanation of this word, that the cession might not in the end occasion difficulties between the two Courts with regard to the meaning of the word "dependencies."

II. The first paragraph, with respect to the limits of Louisiana, contained in the second article of the Answer from England, is agreed to by France. The second paragraph is neither just nor explicit, and it is finally proposed to express it in the following terms :

*The intermediate savage nations between the Lakes and the Mississippi, and within the line traced out, shall be neuter and independent, under the protection of the King, and those without the line on the side of the English, shall be likewise neuter and independent, under the protection of the King of England. The English traders also shall be prohibited from going among the savage nations beyond the line on either side ; but the said nations shall not be restrained in their freedom of commerce with the French and English as they have exercised it heretofore. * **

It may be collected from this Memorial that the first Article of the English Answer was granted in the full extent which the Court of London required ; France only desired eighteen months, instead of a year, for the emigration.

By granting the first part of the second Article, *which cedes the whole current of the Ohio to England*, France proposed in regard to the second point of that Article, to agree upon the nations which should be reputed neutral between Canada, Carolina, and Louisiana. This proposition was the more reasonable, because that by agreeing on this division of the possession of the two nations, an equitable system was adopted, discussions about the limits were prevented for the future, and France did not incur the risk of losing the colony of

Louisiana whenever it pleased the Court of London to invade it.

In the Private Memorial of France, of July 15, 1761, Relating to Spain, the Duc de Choiseul proposes that Spain should be invited to guarantee the future Treaty of Peace. He says : " The King will not disguise from his Majesty that the differences of Spain with England fill him with apprehensions, and give him room to fear that, if they are not adjusted, they will occasion a fresh war in Europe and America. The King of Spain has communicated to his Majesty the three Articles which remain to be discussed between his Crown and the Crown of Britain, which are :

"1. The restitution of some captures which have been made during the present war upon the Spanish Flag.

"2. The privilege for the Spanish nation to fish upon the Banks of Newfoundland.

"3. The demolition of the English settlements made upon the Spanish territories in the bay of Honduras." * * *

EXTRACT FROM M. BUSSY'S NOTE TO MR. PITT.

Since the Memorial of the Propositions from France, was formed, and at the instant that the courier was ready to set out for London, the King received the consent of the Empress-Queen to a separate peace with England, but upon two conditions :

1. To keep possession of the countries belonging to the King of Prussia.

2. That it shall be stipulated that the King of Great Britain, neither in his capacity of King or Elector, shall afford any succour, either in troops or of any kind whatever to the King of Prussia ; and that his Britannic Majesty will undertake that the Hanovarian, Hessian, Brunswickian and other auxiliaries in alliance with Hanover, shall not join the forces of the King of Prussia, in like manner as France shall engage on her part not to yield succour of any kind to the Empress-Queen nor her allies.

Both these conditions appear so natural and equitable in themselves, that his Majesty could not do otherwise than acquiesce in them, and he hopes that the King of Great Britain will be ready to adopt them.

EXTRACT FROM MR. PITT'S LETTER TO M. BUSSY,
July 24, 1761.

* * * It is my duty to declare further to you in plain terms, in the name of his Majesty, that he will not suffer the disputes with Spain to be blended in any manner whatever in the negotiation of peace between the two Crowns ; to which I must add, that it will be considered an affront to his Majesty's dignity, and as a thing incompatible with the sincerity of the Negotiation, to make further mention of such a circumstance.

Moreover, it is expected that France will not at any time presume a right of intermeddling in such disputes between Great Britain and Spain. These considerations, so just and indispensable, have determined his Majesty to order me to return you the Memorial which occasions this, as wholly inadmissible.

I likewise return you, Sir, as totally inadmissible, the Memorial relative to the King of Prussia, as implying an attempt upon the honour of Great Britain, and the fidelity with which his Majesty will always fulfil his engagements with his Allies.

M. DE VAUDREUIL TO THE DUC DE CHOISEUL,
October 30, 1761.

MY LORD,—I was astonished to see, by the historical account of the Memorial of the negotiations between France and England, what I am charged with by the English, with regard to the limits of Canada, as it is entirely false and groundless. I shall give your grace a true account of what passed between Mr. Amherst and me on that head. When I capitulated, I traced out no limits whatever, and in all the messages that passed between the English General and me,

the said territories, countries, streams and islands, we will to be and remain comprised under the name of the government of Louisiana, *which shall be dependent on the general government of New France*, and remain subordinate to it; and we will moreover that all the territories which we possess on this side of the Illinois (country) be united, as far as need, to the general government of New France, and form a part thereof, reserving to ourselves to increase if we think proper, the extent of the government of the said country of Louisiana."

In the Grant made to the Mississippi Company, upon the surrender by M. Crozat of his grant, the boundary of Louisiana was extended northward to the Illinois river, and beyond this, I am not aware that, by any act of the French Government, it ever had more extensive limits given to it.

Mr. Parkman, in his "Discovery of the Great West" says, "the boundaries are laid down on the great map of *Franquëlen*, made in 1684, and preserved in the *Depot des Cartes* of the Marine. The line runs along the south shore of Lake Erie, and thence follows the heads of the streams flowing into Lake Michigan. It then runs north-west and is lost in the vast unknown of the now British Territories. On the south it is drawn by the heads of the streams flowing into the Gulf, as far west as Mobile, after which it follows the shore of the Gulf to a little south of the Rio Grande, then runs west, north-west, and finally north along the range of the Rocky Mountains." *Note on page 284*. This map is obviously founded on the *Proces Verbal*, by which La Salle took possession of the Valley of the Mississippi on behalf of the King of France.

As a subordinate province carved out of Canada, and made dependent upon it, Louisiana could extend no further than is expressly stated in the instrument, which gives it a political existence.

It never extended further north than the Illinois.

The question of the extent of Louisiana was argued at the peace of 1762.

Canada was ceded to Great Britain.

The official maps used by France in her negotiations with Great Britain incontestibly prove that the country north and north-west of the Mississippi was ceded as the Province of Canada. *T. Falconer on the North West Boundary*; pp. 87, 88; *Mofras Explorations in Oregon and California*; *French's Documents relating to the History of Louisiana*.

EXTRACT FROM MOFRAS' "CALIFORNIA."

"The treaty recognizing the independence of the United States, signed by England in 1782, those of the 20th January and 30th September, 1783, as also the treaties of 1794 and 1795, make no mention in the article, frontiers of the territories situated to the west of the Rocky Mountains. The latter only stipulates that the possessions of the Hudson's Bay Company shall not be accessible to citizens of the United States. Now if the boundaries between New France and that Company were not clearly defined, even after the treaty of Utrecht in 1713, and that of the cession of Canada in 1763, it is undeniable that either New France or the possessions of the H. B. Company extended as far as the Pacific ocean, and that if the Spaniards first explored the north-western coast of America, the French first discovered the interior of the continent proceeding from the east westwards. All the old maps, in this in accord with the most reliable authors, only place the boundary of the French possessions in Canada at the Southern sea. L'Escarbot who wrote in 1617, among others, states as follows:—Thus our New France has for its limits, on the western side the lands as far as the sea called the Pacific, on this side the Tropic of Cancer; on the south the islands of the Atlantic sea, in the direction of Cuba and the island of Hispaniola; on the east by the Northern sea, which bathes New France, and on the north that land called Unknown, towards the icy sea as far as the Arctic pole. Lastly, in a map engraved in 1757, and attached to the Memorials of the Commissioners of the Kings of France and of England in America, it may be observed that New France extended as far as the Pacific Ocean, and

it shows on the western coast of America, at the 46th degree a large river running in a direction which correspond exactly with that of the Rio Columbia. There is, moreover, nothing surprising in this specific description since, from 1711 to 1754, the Captains General of New France sent out numerous expeditions to the western part of Canada and after thirty years of uninterrupted explorations under the enlightened government of the Marquis de Beauharnois; an officer, M de la Verendrye, acquired a thorough knowledge of the river and of the western sea, which were no other than the Pacific Ocean and the Columbia.

APPENDIX K.

Conseil de Marine, 7th December, 1717.

Messieurs de Vaudreuil and Begon having written last year that the discovery of the Western Sea would be advantageous to the colony, it was approved that, to reach it M. de Vaudreuil should establish three posts, which he had proposed, and he was instructed at the same time to have the same established without any expense accruing to the King,—as the person establishing them would be remunerated by trade,—and to send a detailed schedule of the cost of continuing the discovery. In reply it is stated that M. de Vaudreuil in the month of July last caused the Sieur de la Noue, Lieutenant, to set out with eight cannon to carry out this scheme of discovery. He gave him instructions to establish the first post at the River Kamastiquoya, to the north of Lake Superior, after which he is to go to Takamamiononio, near the Christianaux Lake to establish a second, and to acquire through the Indians the information necessary for the establishment of the third at the Lake of the Assenipouelles.

This journey costs the King nothing, because those engaged in it will be remunerated for their outlay by the trade which they will engage in; but to follow up the discovery it is abso-

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fue-*

lutely necessary that his Majesty should bear the expense, because the persons employed in it will have to give up all idea of trade.

They estimate that 50 good canoemen (*voyageurs*) will be required; of these, 24 will occupy the three posts, and the 26 others will be engaged in making the discovery from the lake of Assenipoelles to the Western sea. They calculate the wages of these men at 300 francs a year each, and estimate that the expenditure as well for provisions and canoes, as for goods for presents will amount tof.29,023 10

There will have to be added, for supplementary outfit, 600 francs for each of the 6 officers employed in the discovery..... 3,600 10

Total.....32,623 20

As it will take about two years to make this journey, they estimate that the expenditure may amount to fifty thousand francs.*

APPENDIX L.

MCKENZIE'S GENERAL HISTORY OF THE FUR TRADE FROM CANADA TO THE NORTH WEST.

The Indians, to procure the necessary supply, were encouraged to penetrate into the country, and were generally accompanied by some of the Canadians, who found means to induce the remotest tribes of natives to bring the skins which were most in demand, to their settlements, in the way of trade. (p. 1.)

At length, military posts were established at the confluence of the different large lakes of Canada, which, in a great measure, checked the evil consequences that followed from the improper conduct of these foresters, and, at the same time protected the trade. Besides, a number of able and respectable men retired from the army, prosecuted the trade in

* Library of Parliament MSS., 3rd series, vol. 6, pp. 529, 530.

person, under their respective licenses, with great order and regularity, and extended it to such a distance, as, in those days was considered to be an astonishing effort of commercial enterprize. (p. 3.)

The Missionaries "were, during their mission, of great service to the commanders who engaged in those distant expeditions, and spread the fur trade as far west as the banks of the Saskatchewan river, in 53° North latitude and longitude 102° west. (pp. 5, 6.)

But notwithstanding all the restrictions with which commerce was oppressed under the French government, the fur trade was extended to the immense distance which has been already stated; and surmounted many most discouraging difficulties which will be hereafter noticed; which at the same time, no exertions were made from Hudson's Bay to obtain even a share of the trade of a country which, according to the charter of that Company, belonged to it, and from its proximity, is so much more accessible to the mercantile adventurer. (p. 6.)

For some time after the conquest of Canada, this trade was suspended, which must have been very advantageous to the Hudson's Bay Company, as all the inhabitants to the westward of Lake Superior were obliged to go to them for such articles as their habitual use had rendered necessary. Some of the Canadians who had lived long with them, and were becoming attached to a savage life, accompanied them thither annually, till mercantile adventurers again appeared from their own country, after an interval of several years, owing, as I suppose, to an ignorance of the country in the conquerors and their want of commercial confidence in the conquered. There were, indeed, other discouragements, such as the immense length of the journey necessary to reach the limits, beyond which this commerce must begin; the risk of property; the expenses attending such a long transport: and an ignorance of the language of those who from their experience must be necessarily employed, as the intermediate agents between

them and the natives. But notwithstanding these difficulties, the trade by degrees began to spread over the different parts to which it had been carried by the French, though at a great risk of the lives, as well as the property, of their new possessors, for the natives had been taught by their former allies to entertain hostile dispositions towards the English from their having been in alliance with their natural enemies the Iroquois; and there were not wanting a sufficient number of discontented, disappointed people to keep alive such a notion; so that for a long time they were considered and treated as objects of hostility. To prove this disposition of the Indians, we have only to refer to the conduct of Pontiac at Detroit, and the surprise and taking of Michilimackinac, about this period. (p. 7.)

Hence it arose that it was so late as the year 1766, before which the trade I mean to consider commenced at Michilimackinac. The first who attempted it were satisfied to go the length of the River Caministiquia, about thirty miles to the eastward of the Grand Portage, where the French had a principal establishment and was the line of their communication with the interior country. It was once destroyed by fire. Here they went, and returned successful in the following spring to Michilimackinac. Their success induced them to renew their journey, and invited others to follow their example. Some of them remained at Caministiquia, while others proceeded to and beyond the Grand Portage, which since that time has become the principal entrepot of that trade. * * *

One of these, Thomas Curry, with a spirit of enterprise superior to that of his contemporaries, determined to penetrate to the furthest limits of the French discoveries in that country; or at least till the frost should stop him. For this purpose he procured guides and interpreters who were acquainted with the country, and with four canoes arrived at Fort Bourbon, which was one of their posts at the west end of Cedar Lake, on the waters of the Saskatchewan. His risk

and toil were well recompensed, for he came back the following spring with his canoes filled with fine furs, with which he proceeded to Canada and was satisfied never again to return to the Indian country. (p. 8.)

In a few years an animated competition prevailed, and the contending parties carried the trade beyond the French limits, though with no benefit to themselves or neighbours, the Hudson's Bay Company, who in the year 1774, and not till then, thought proper to move from home to the east bank of Sturgeon Lake, in latitude $53^{\circ} 56'$ north, and longitude $102^{\circ} 15'$ west, and became more jealous of their fellow-subjects, and perhaps with more cause than they had been of those of France. From this period to the present time, *they have been following the Canadians to their different establishments, while, on the contrary, there is not a solitary instance that the Canadians have followed them ; and there are many trading posts which they have not yet attained.* This, however, will no longer be a mystery, when the nature and policy of the Hudson's Bay Company is compared with that which has been pursued by their rivals in this trade. (p. 9.)

Joseph Frobisher, one of the gentlemen engaged in the trade, determined to penetrate into the country yet unexplored, to the north and westward, and in the spring of the year 1775, met the Indians from that quarter on their way to Fort Churchill, at Portage de Traite, so named from the circumstance that on the banks of the Mississippi or Churchill river, latitude $55^{\circ} 25'$ north, longitude $103^{\circ} 15'$ west, it was with some difficulty that he could induce them to trade with him, but he at length procured as many furs as his canoes could carry. (p. 11.)

He sent his brother to explore the country still further west, who penetrated as far as the lake Isle à la Croix, in latitude $55^{\circ} 26'$ north, and longitude 108° west. (p. 12.)

Peter Pond, as representative of a joint-stock company, was directed to enter the English river, so-called by Mr. Frobisher, to follow his track, and, if possible, to proceed still

further ; if possible, to Athabasca, a country hitherto unknown but from Indian report. In this enterprise he at length succeeded, and pitched his tents on the banks of the Elk river, by him erroneously called Athabasca river, about 30 miles from the Lake of the Hills, into which it empties itself. Here he passed the winter of 1778-9, saw a vast concourse of Knistineaux and Chippewyan tribes, who used to carry their furs annually to Churchill, the latter by the barren grounds, where they suffered innumerable hardships, and were sometimes even starved to death. * * *

. Mr. Pond's reception and success were beyond his expectation ; and he procured twice as many furs as his canoes would carry. They also supplied him with as much provision as he required during his residence among them, and sufficient for his homeward voyage. Such of the furs as he could not embark, he secured in one of his winter huts, and they were found the following season, in the same state in which he left them.

The improper conduct of some of the Canada traders made it dangerous to remain among the natives. Those who passed the winter at the Saskatchewan, got to the Eagle Hills, where, in the spring of 1780, a few days previous to their intended departure, a dose of laudanum was given to an Indian, from which he died ; the accident produced a fray in which one of the traders and several of the men were killed, and the remainder saved themselves by precipitate flight. (p. 13.)

Pond tried at Montreal, 1781, for the murder of Wodin, who was shot in the latter part of 1780. Murder high up the Mississippi, or English river, at Lake La Rouge. (p. 16.) Wodin was a Swiss gentleman, of strict probity and known sobriety.

In 1781-2, Canadians, who were much reduced in number, became confined to two parties, who began to think seriously of making permanent establishments in the country on the Mississippi river, and at Athabasca. For this purpose, they

selected their best canoe-men. They got to the portage between the Mississippi and Elk rivers. Found small-pox everywhere. Got but seven packages of beaver. Traders returned next year, found things better. (p. 17.)

Merchants in 1783-4 formed the N. W. Company, divided the stock into 16 shares. No capital was deposited. In the spring, two of the shareholders went to Grand Portage with their credentials, which were confirmed and ratified by all parties except Mr. Peter Pond, who was not satisfied with the share allotted him. Accordingly, he and another gentleman, Peter Pangman, who had a right to be a partner, but for whom no provision was made, came to Canada with a determination to return to the country, if they could find any person to join them and give their scheme a proper support.

The traders in the country, and merchants in Montreal, entered into a co-partnership; successful. Pond joined them; but Pangman, Gregory and Macleod formed a separate business.

McKenzie was five years in Gregory's counting-house. Set up then for himself at Detroit. Admitted a partner, and sent to the Indian country. After the murder of one of our partners, the laming of another, and the narrow escape of one of the clerks, who received a bullet through his powder-horn, in the execution of his duty, union in July, 1787, consisted of 22 shares. ++

In 1788, gross adventure for the year, £40,000.

In 1798, the number of shares was increased to 42.

The French had several trading establishments upon the islands and banks of Lake Bois Blanc, before the conquest. (p. 53.)

The French had several settlements in and about Lake du Bois. (p. 57.)

Lake du Bois—latitude 49° 37', longitude 94° 31'; Mississippi—latitude 47° 38', longitude 95° 6'. (p. 58.)

On the Saskatchewan are three principal forts for trade—Fort Dauphin, which was established by the French, before

the conquest, Red Deer river and Swan river forts, with occasional detached posts from these. The inhabitants are Knistineaux, from the north of Lake Winnipic; and Algonquins, from the country between Red River and Lake Superior. (p. 65.)

Upon the Saskatchewan there are five principal factories for the convenience of the trade with the natives. Nipawi House, South Branch House, Fort George House, Fort Augustus House and Upper Establishment. (p. 69.) There have been many others, which for various causes have been changed for these.

It may be proper to observe that the French had two settlements upon the Saskatchewan long before, and at the conquest of Canada—the first at the Pasquin, near Carrot river, and the other at Nipawi, where they had agricultural instruments and wheel-carriages, marks of both being found about those establishments, where the soil is excellent. (p. 73.)

Till the year 1782, the people of Athabasca sent or carried their furs regularly to Fort Churchill, Hudson's Bay; some of them have since that time repaired thither, notwithstanding they could have provided themselves with all the necessaries which they required * * * At present, however, this traffic is in a great measure discontinued. * * (p. 91.)

CARVER'S TRAVELS.

The latter end of July I arrived, after having coasted through West Bay, at the Grand Portage, which lies on the north-west borders of Lake Superior. Here those who go on the North West Trade, to the Lakes DePluye, Dubois, &c., carry over their canoes and luggage about nine miles, till they come to a number of small lakes, the waters of some of which descend into Lake Superior. and others into the River Bourbon. Lake Superior from West Bay is bounded by rocks, except towards the south-west part of the bay where I first entered it, there it was tolerably level. * * *

Here I met a large party of Killistnoe and Assinipoil

Indians, with their respective kings and their families. They will come to this place in order to meet the traders from Michillimackinac, who make this their road to the North West. From them I received the following account of the Lakes that lie to the north west of Lake Superior.

Lake Bourbon, the most northern of those yet discovered, received its name from the French traders who accompanied a party of Indians to Hudson's Bay some years ago; and was thus denominated by them in honour of the Royal Family of France. It is composed of the waters of the Bourbon river, which, as I have before observed, rises a great way to the southward, not far from the northern heads of the Mississippi. This lake is about 80 miles in length, north and south, and is nearly circular. The land on the eastern side is very good; and to the south-west there are some mountains. In many other parts there are barren plains, bogs, and morasses. Its latitude is between fifty-two and fifty-four degrees north, and it lies nearly south-west from Hudson's Bay. As through its northern situation the weather there is extremely cold, only a few animals are to be found in the country that borders on it. * * * (p. 107.)

Lake Winnipeck, or as the French write it, Lake Quinipique, which lies nearest to the foregoing, is composed of the same waters. It is in length 200 miles, north and south; its breadth has never been properly ascertained, but is supposed to be about 100 miles in its widest part. This lake is very full of islands; these are, however of no great magnitude. Many considerable rivers empty themselves into it, which, as yet, are not distinguished by any names. * * *

The lands on the south-west part of it is very good, especially about the entrance of a large branch of the River Bourbon, (Assiniboine), which flows from the south-west. On this river there is a factory that was built by the French, called Fort La Reine, to which the traders from Michilimackinac resort to trade with the Assinipoils and Killistinoes. To this place the Mahahs who inhabit a country 250 miles south-west,

come also to trade with them; and bring great quantities of Indian corn to exchange for knives tomahawks, and other articles. * * *

Lake Winnepeck has on the north-east some mountains and on the east many barren plains. (p. 109.)

On the waters that fall into this Lake, the neighbouring nations take great numbers of excellent furs. Some of these they carry to the factories and settlements belonging to Hudson's Bay Company, situated above the entrance of the Bourbon river; but this they do with reluctance on several accounts; for some of the Assinipoils and Killistinoes, who usually traded with the Company's servants, told me that if they could be sure of a constant supply of goods from Michillimackinac, they would not trade anywhere else. They shewed me some cloth and other articles that they had purchased at Hudson's Bay, with which they were much dissatisfied, thinking that they had been greatly imposed upon by the barter.

Allowing that their accounts were true, I could not help joining in their opinion. But this dissatisfaction might probably proceed, in a great measure, from the intrigues of the Canadian traders; for whilst the French were in possession of Michillimackinac, having acquired a thorough knowledge of the trade of the north-west countries they were employed on that account, after the reduction of Canada, by the English traders there, in the establishment of this trade, with which they were themselves quite unacquainted. One of the methods they took to withdraw these Indians from their attachment to the Hudson's Bay Company, and to engage their good opinion in behalf of their new employers, was by depreciating on all occasions the Company's goods, and magnifying the advantages that would arise to them from trafficking entirely with the Canadian traders. In this they too well succeeded, and from this, doubtless, did the dissatisfaction the Assinipoils and Killistinoes expressed partly proceed. But another reason augmented it, and this was the length of their journey to the

Hudson's Bay factories, which, they informed me, took them up three months of the summer heat to go and return, and from the smallness of their canoes they could not carry more than a third of the beavers they killed. So that it is not to be wondered at, that these Indians should wish to have traders come and reside among them. * * *

The French always kept a small schooner on Lake Superior whilst they were in possession of Canada. (p. 134.)

Two very large rivers empty themselves into this Lake on the north and east side: one is called the Nipegon river, or, as the French pronounce it, the Allanipegon, which leads to a band of the Chipeways, inhabiting a lake of the same name; and the other is termed the Michipicooton river, the source of which is situated towards James' Bay, from whence there is but a short carriage to another river, which empties itself into that bay, at a fort belonging to the Company. It was by this passage that a party of French from Michillimackinac invaded the settlements of that society in the reign of Queen Anne. Having taken and destroyed their forts, they brought the cannon which they found in them to the fortress from whence they had issued; these were small brass pieces, and remain there to this present time. (p. 137.)

At the upper end of the Straits of Ste. Marie stands a fort that receives its name from them, commanded by Mons. Cadot, a French Canadian, who, being proprietor of the soil, is still permitted to keep possession of it. (p. 141.)

Receives its name from them
Receives its name from them

The banks of the River Detroit, both above and below these towns, are covered with settlements, that extend more than twenty miles; the country being exceedingly fruitful and proper for the cultivation of wheat, Indian corn, oats and peas. The inhabitants, who are chiefly French that submitted to the English Government, after the conquest of these parts by General Amherst, are more attentive to the Indian trade than to farming. It is badly cultivated. (p. 151.)

APPENDIX M.

(N. Y. Hist. Col., Vol. 10.)

PARIS DOCUMENTS, IX.

EXTRACT from an Abstract, in form of a Journal of the most interesting occurrences in the Colony, in reference to military movements, and of the various intelligence received, since the departure of the ships in November, 1746.

(Page 117 of the N. Y. Hist. Col.)

August 13.—Captain de Noyelle and Sieur de La Verendrye arrive from Michillimackinac, and deliver to the General a letter dated at that post, on the 23rd July, and addressed to him by Sieur de Noyelle, junr., commanding, in the absence of Mr. de La Corne, senior, and by other officers, who arrived from the upper posts, and happened to be then at Michillimackinac.

The General is informed by this letter of the confusion that prevails among all the nations of that post and neighbourhood, Outaouais, Sauteurs and Mississaguès. The Outaouacs of Saguinam have killed three Frenchmen who were coming from Detroit to Michillimackinac. Two French canoes which had gone *en prime* from Montreal to the West Sea,* have been attacked by the Sauteurs, about the place called La Cloche,† near Lake Michigan; one, containing eight men, has been wholly defeated; the second, by striking out into the Lake and throwing its cargo overboard, escaped to Michillimackinac. Another Frenchman has been stabbed by the Sauteurs at a place called La Grosse Isle,‡ only two leagues distant from the post. These Indians have offered divers insults and threats

* La mer de l'Ouest. In Carver's Map, the head of Lake Superior is called the West Bay.

† An Island north of the Great Manitoulin, in Lake Huron.

‡ An Island immediately north of Mackinaw Island; map of St. Mary's Straits, in *Charlevoix*, *id.*

at the fort, and in the vicinity; they killed all the horses and other cattle that they could not catch; they designed to surprise the fort, but were discovered and obliged to leave, by ringing the bell and beating the tap-too, as usual, and even by making some defensive demonstrations. There had been greater reason for presuming bad intentions on the part of the Indians, inasmuch as a crowd of young men had armed themselves with knives, in a council which had been held at their request, on the 3rd July, and which terminated in recrimination. The Indians have not been permitted to enter the fort, except under certain restrictions. Some Frenchmen from Point Chagouamigon, and Mr. de Noyelle, senr., on his usual return from the West Sea, arrived a few days after. Certain intelligence had also been received there from Detroit. This reinforcement will somewhat tranquillize the fort, which contained, before their arrival, only twenty-eight men. An Outaouas Indian, named Neguiauamin, arrived on the 2nd July at the post, to communicate in secret to the Commandant and the Missionary that the Iroquois, the Huron and the Flat-head, had come to an understanding with the English to destroy the French and drive them to the other side of the Sea; that the Outaouais of Detroit is in the plot; that the Poutouatami will co-operate; that the Mississaguès and Sauteurs are gained over; that the Outaouac of Saguinam has already struck; that the Outaouas of Michillimackinac would have taken part against us had it not been for the portion of the village which is at Montreal, and that they would yet possibly declare against us on the arrival of seventy men from Saguinam, who are to be reinforced by the Sauteurs of Grosse Isle; that they were to leave in a few days, and to come in the night to speak to the Outaouas of the post, and that it were well to allow no person to go hunting, and to keep strict watch. Mr. de Noyelle, junr., adds that he will detain, until further orders, at Michillimackinac, the canoes which were to come from Montreal to the different posts, unless affairs changed, and it became certain that the dispositions of the Indians at those

posts were altered. We are co-operating in the adoption of the most effectual measures, either to restore tranquillity at the post of Michillimackinac, or at least to place it in a proper state of defence against all attacks of the Indians.

(Page 129 of *N. Y. Hist. Col.*, Vol. 10.)

October 14th.—Sieur Masse, who has been the whole year at Cape Chat, has returned.

We received letters from Michillimackinac informing us of the arrival of Chevalier de La Verendrye, who has found that post very quiet; the Outaouacs are beginning to be sorry for what occurred last year.

PARIS DOCUMENTS, X.

Occurrences in Canada during the year 1747-8.

EXTRACT of whatever occurred of interest at Quebec in regard to the operations of the war, and the various intelligence received there since the sailing of the ships in November, 1747.

(Page 137. News from Michillimackinac.)

Nov. 10.—We are in receipt of letters from Michillimackinac. Lieutenant de St. Pierre, who had been selected to command the convoy sent to that post, arrived there, without any accident, in 45 days. Captain de Verchères, appointed Commandant at the Bay,* and who was to remain at Michillimackinac with his traders from Montreal, had taken his departure thence for his post, with his *voyageurs*. Mr. de St. Pierre writes us on October 22nd that he has not been able to speak to the Indians, who were, when he arrived, all gone to their winter quarters, without having given any token of their repentance for the outrage they had perpetrated. It is, hence, to be presumed that they persist in their evil disposi-

* Green Bay.

tions ; that the Marquis de Beauharnois' order, sent with Sieur de La Verendrye, in the month of August, has been badly executed ; that 'twas the only means of reducing those nations ; that he does not anticipate success otherwise than by depriving them of the supplies they derive for the support of their families, and which they cannot dispense with. This might have been effected, were the traders prevented going to the different posts, according to the Marquis de Beauharnois' intentions ; and this officer takes this occasion of saying, that it would be well not to allow the canoes to leave Montreal next spring for Michillimackinac and other posts, until he have informed us of the sentiments in which the nations of that country will then be, and as soon as he shall have learned their intentions, he will take occasion to report them to us.

PARIS DOCUMENTS, X.

EXTRACTS from a letter from M. de Berthet, Commandant at the Illinois, to Sieur Lachine, trader at the Ourfatanons, dated Cahos, 20th October, 1747, whereof he sends us a copy.

(Page 154. *N. Y. Hist. Col.*, Vol. 10.)

Sieur de La Verendrye.

March 29.—Sieur de La Verendrye, junr., has returned to Montreal with the Cristinaux and other warriors of his party. In the neighbourhood of Corlac he fell in with a party of Mohawks and Dutchmen, who were coming to Sarastan, on a scouting party. He brought two Mohawk scalps, among which is that of the principal chief of that nation ; one of a Dutchman, and a Dutch prisoner, who reports nothing of interest—only says that there is considerable talk about peace. This first blow on the Mohawks will not fail to frighten them.

(Page 167. *N. Y. Hist. Col.*, Vol. 10.)

Convoy to Michillimackinac.

June 20.—Count de la Galissoniere orders the despatch from Montreal of the convoy for Michillimackinac, under the

command of Lieutenant de St. Vincent. This convoy is well escorted and sufficiently well provided with provisions and merchandise to supply the post abundantly. The General writes to Lieutenant de St. Pierre, Commandant there, that the convoy was delayed in the hope of receiving news from Michillimackinac, but that the advanced season obliged him to order its dispatch, though he is uninformed of what is passing at that post ; that should the troubles continue, nothing remains to be done than to abandon, as already proposed, those posts which are exposed to danger, in order to oblige the guilty to come to Michillimackinac, and even to Montreal, in search of what they want ; that he must exact the surrender of the murderers, and, should circumstances force him, grant peace on the same conditions as those accorded to the Hurons of Detroit, who were to bring two English prisoners for every Frenchman they had killed ; the promises must, first of all, be performed, in order that these nations may not betray us, as the Hurons have done. The General leaves this officer at liberty to determine, according to circumstances, the carrying into execution the different licenses granted for the northern posts, and observes to him, nevertheless, in regard to the West Sea and Nipigon, that in case these posts were abandoned, it would be to be feared that the English might irretrievably monopolise the entire of that trade which they now share with sufficient advantage. Demand some Panis, in order to indemnify the Indians who have surrendered some English prisoners.

Ensigns Laronde and Chevalier de La Verendrye have also taken their departure ; the first for Point Chagouamigon, and the second for the West Sea.

APPENDIX N.

Sir George E. Cartier and Mr. McDougall to Sir F. Rogers.

WESTMINSTER PALACE HOTEL, LONDON,
January 16, 1869.

SIR,—We have the honour to acknowledge receipt of your letter of the 30th ult. (with its enclosures), stating that you were directed by Earl Granville to transmit to us a copy of a letter which his lordship had received from the Deputy-Chairman of the Hudson's Bay Company, relating to some claims which have been taken under the authority of the Canadian Government, and from which the Company apprehend an invasion of their territorial rights. We inform us that his lordship will be glad to receive any explanation which we may be able to furnish on the steps taken by the Canadian Government.

We have read the letter of the Deputy-Chairman, and extracts from the letters of Governor McTavish, and have much pleasure in being able to furnish his lordship with what we hope will prove satisfactory information on the subject of the Hudson's Bay Company's complaint.

1. In the month of September last, very precise information reached the Canadian Government that, in consequence of the complete destruction of their crops by locusts, the people of the Red River Settlement, numbering probably from 12,000 to 15,000 souls, were in imminent danger of starvation during the winter about to set in.


2. Numerous and earnest appeals for aid had already been made to the Canadian public by writers in the newspapers, and by clergymen and others acquainted with the country. The Right Reverend Robert Machray, Lord Bishop of Rupert's Land, a member of the Council of Assiniboia, and so far a representative of the Company, visited Ottawa, and urged upon members of the Canadian Government the duty of prompt assistance to avert the threatened calamity.

3. No steps had been taken (so far as the Government could learn) by the Hudson's Bay Company to provide supplies, and aware that a few days' delay at that season might render it impossible to get provisions to Red river in time to afford relief, the Canadian Government appropriated the sum of twenty thousand dollars (\$20,000) towards the construction of a road from Lake of the Woods to Fort Garry. The Minister of Public Works (one of the undersigned) was directed to expend the principal part of this sum in the purchase of provisions, which were to be forwarded with all possible despatch to the Red River Settlement, and offered to the settlers, not as alms, but in exchange for their labour on a public work in their own vicinity, and of the highest utility to their settlement.

4. A confidential and experienced agent proceeded at once to St. Paul's, Minnesota, and succeeded in forwarding a considerable supply of provisions before the close of navigation. A further quantity had reached Fort Abercrombie, an American post in Dakota territory, from which point it can be sent to the settlement early in the spring.

5. Information has reached the undersigned since their arrival in England, that the Government Agent had, in accordance with his instructions, conferred with the local authorities on his arrival at Fort Garry ; that he had received their approval and promise of assistance ; that his timely aid was a cause of much joy and thankfulness in the settlement ; and that he had proceeded with a large force of labourers to the limit of the prairie country, some thirty miles from Fort Garry, towards Lake of the Woods, and had there commenced the construction of the road.

6. The immediate object of the Canadian Government in taking the steps complained of, was to supply food to a starving community about to be imprisoned for six months in the heart of a great wilderness, without roads or means of communication with their fellow-subjects, and to supply it in the way most acceptable to a high-spirited people, viz., in ex-



change for their labour. It was thought that even the Hudson's Bay Company might look with favour upon a public work which, when completed, will prove a valuable protection to those under their government, against similar dangers in the future. On behalf of the Canadian Government, we deny that a "trespass" has been committed, or that our action in this matter was intended to forestall or embarrass negotiations, which the Imperial Parliament had directed to be undertaken for the transfer of the North-Western territories and Rupert's Land to the Dominion of Canada.

The foregoing explanation may perhaps be deemed sufficient to enable Earl Granville to answer the complaint of the Hudson's Bay Company against the Canadian Government; but the undersigned beg leave to add one or two observations which, in their opinion, this extraordinary demand for the "intervention of her Majesty's Government," both invites and justifies. If the Hudson's Bay Company, who claim the right to hold and govern the territory in which the alleged "trespass" has taken place, had performed the first duty of a government towards its people, by providing them with easy means of communication with the outer world, or if they had shown themselves either able or willing to meet the threatened calamity by a prompt effort to forward sufficient supplies to the settlement before the close of navigation, the Canadian Government would have rested happy in the belief that neither humanity nor public policy required or justified their interference.

The assertion of the Deputy-Governor of the Hudson's Bay Company, that the country between Lake of the Woods and Red river is "the freehold territory of the Company," and that the so-called "trespass" of the Canadian Government in sending provisions to the starving settlers, and assisting them to make a road for their own convenience and safety hereafter, is "an actual encroachment on the soil of the Company," might, if unnoticed by us, be claimed as another proof or admission of the rights of the Company in that part of the

continent. We, therefore, beg to remind his lordship that the boundaries of Upper Canada on the north and west, were declared, under the authority of the Constitutional Act of 1791, to include "all the territory to the westward and southward" of the "boundary line of Hudson's Bay, to the utmost extent of the country commonly called or known by the name of Canada." Whatever doubt may exist as to the "utmost extent" of old, or French Canada, no impartial investigator of the evidence in the case can doubt that it extended to, and included, the country between Lake of the Woods and Red river.

The Government of Canada, therefore, does not admit, but, on the contrary, denies, and has always denied, the pretensions of the Hudson's Bay Company to any right of soil beyond that of squatters, in the territory through which the road complained of is being constructed.

We have, &c.,

(Signed)

G. E. CARTIER.

WM. McDougall.

Sir Frederic Rogers, Bart., &c.,
Colonial Office.

Letter from Sir Stafford H. Northcote to Sir Frederic Rogers, Bart.

HUDSON'S BAY HOUSE, LONDON,
February 2nd, 1869.

SIR,—I have the honour to acknowledge your letter of the 28th January, addressed to the Deputy-Governor of this Company, enclosing a communication from Sir G. Cartier and Mr. McDougall, on the subject of the recent proceedings of the Canadian Government in the matter of the construction of a road through the Company's territory between Fort Garry and the Lake of the Woods.

After the distinct statement contained in Sir Curtis Lampson's letter of the 22nd December, that the Company, while

protesting against a trespass on their land, were prepared favourably to entertain any application for permission to make such a road, either on the part of the Imperial or of the Canadian Government, the Committee think it unnecessary to discuss the greater portion of the letter of the Canadian Ministers. Their objection is not to the road being made, but to its being undertaken by the Canadian Government as a matter of right, as though the territory through which it is to pass were Canadian. Such a step, taken at a moment when negotiations are in progress for the transfer of the Company's possessions to Canada, and taken by a Government which openly disputes their title to this portion of them, could not have been allowed to pass unchallenged without derogating from the Company's rights. The Canadian Government themselves seem to have been alive to this. Mr. McTavish states that the agent of that Government (Mr. Snow), on arriving at the Red river, communicated to him his instructions from the Commissioner of Public Works in Canada, containing the expression of "a hope on the part of the Commissioner, that the Company's Agent here would offer no opposition to Mr. Snow's operations, but would leave the matter entirely in the hands of the Imperial Government." Governor McTavish, upon this, very properly allowed Mr. Snow to commence his operations; and so far as this Company is concerned, no impediment has been, or will be, offered to the prosecution of the work.

If it were worth while to discuss that part of the letter of the Canadian Ministers which refers to the circumstances under which the construction of the road was ordered, the Committee would be able to show that the Company had in no way failed in their duty to the Colony; but that they had promptly taken measures for the relief of its inhabitants, and had supplied large sums, both by direct grants and by subscriptions raised under their auspices for that purpose, at a period anterior to the appropriation of the Canadian road-grant. They would also be able to point out how the delay

which has occurred in opening up communications and otherwise developing the resources of the Red River Settlement, is due to the restraint which has been imposed upon them by her Majesty's Government, at the request of Canada, and not to any negligence or indifference of their own.

But the Committee desire to avoid the raising of a false issue, and they accordingly instruct me to re-state to Earl Granville the precise complaint which they have to make. It is this : that while negotiations are going on for the acquisition of their territory by Canada, the Canadian Government are endeavouring to exercise rights of ownership over a portion of that territory, to the exclusion of the Company, and to the prejudice of their title. This they are doing by virtue of an old claim which they have repeatedly advanced, which the Company have invariably disputed, and have declared themselves ready to contest before a court of law, and which her Majesty's Government, acting under the advice of various Law Officers of the Crown, have declined to endorse.

The Canadian Government have hitherto shown no inclination to bring their claim to the test of a judicial decision, and in the absence of any such decision, the Committee consider it not unreasonable to ask that due respect should be paid by the Company's uninterrupted possession of the territory for two centuries, and to the numerous and weighty legal opinions which have from time to time been given in their favour.

In appealing to Earl Granville for support in this matter, instead of entering into a controversy with Canada, or taking legal steps to enforce the Company's rights, the Committee have been actuated by a desire to proceed as far as possible in accordance with the views and wishes of her Majesty's Government, as they have endeavoured to do throughout the pending negotiations for the establishment of a settled form of Government at the Red river. They desire now respectfully, but confidently, to claim the support and protection of the Colonial Minister against any invasion of the Company's

rights which may have been prompted or facilitated by the policy which they have adopted in order to meet the wishes of the Colonial Office.

I have, &c.,

STAFFORD H. NORTHCOTE.

Sir Frederic Rogers, Bart.

Sir S. Northcote to Sir F. Rogers.

HUDSON'S BAY HOUSE, LONDON,
January 13th, 1869.

SIR,—I have the honour to acquaint you, for the information of Earl Granville, that I was elected by the shareholders of this Company, on Tuesday, the 5th instant, to the office of Governor, vacant by the resignation of the Earl of Kimberley.

It now becomes my duty to address you in reply to Mr. Adderley's letter, dated the 1st December, 1868, which was received by my predecessor on the eve of his resignation, and to which, in consequence of that event, the Committee have not been able to send an earlier answer.

Before making any observations upon the particular topics discussed in Mr. Adderley's letter, I am desired by the Committee to assure Lord Granville that they continue sincerely anxious to promote the object with a view to which this Company was reconstructed five-and-a-half years ago, viz., the gradual settlement of such portions of their territory as admit of colonization; that they adhere to the opinion expressed in their resolution of the 28th August, 1863, viz., that the time has come when it is expedient that the authority, executive and judicial, over the Red River Settlement and the south-western portion of Rupert's Land, should be vested in officers deriving such authority directly from the Crown; and that they cheerfully accept the decision of her Majesty's Government, communicated to them in Mr. Adderley's letter of the 23rd April, 1868, viz., that the whole of the Company's territory should, under proper conditions, be united with the

Dominion of Canada, and placed under the authority of the Canadian Parliament.

Acting in accordance with the wish of her Majesty's Government as conveyed to them in Mr. Elliott's letter of the 23rd January, 1867, the Committee have declined to encourage overtures which have been made to them by private persons for the purchase of portions of the Company's territory with a view to their colonization, and have kept the whole question in abeyance during the time that the negotiations which have led to the confederation of the British Provinces constituting the Dominion of Canada, were proceeding. In the whole of that time they have taken no step which could give rise to fresh complications, or could place any new difficulty in the way of the admission of their territory into the confederation when the proper moment should arrive; and when they were informed by Mr. Adderley's letter of the 23rd of April, that the Parliament of Canada had addressed her Majesty upon this subject, and were requested to state the terms which the Company would be prepared to accept, proceeding on the principle adopted in the interrupted negotiation of 1864, they unhesitatingly complied with the desire of the Government.

It is therefore with surprise, as well as with regret, that they have learnt from the letter now under reply that the terms proposed by them, even when most strictly in conformity with the principles adopted in 1864, are considered by her Majesty's Government to be inadmissible, and not to afford much prospect of an arrangement being come to. They find, for instance, that the stipulation that the Company should receive one shilling per acre on lands hereafter sold, which was originally suggested to the Committee by His Grace the late Duke of Newcastle, in Mr. Fortescue's letter of March 11th, 1864, and which has never hitherto been called in question, is the first point to which exception is now taken. Objections are also raised against several other proposals which have been long before the Government, while no notice at all is taken of

some which have been made for the first time with a view to the protection of the Company's trade, and with regard to which the Committee are left in ignorance whether they are considered admissible or not.

The Committee, although somewhat embarrassed by this apparent change in the spirit of the correspondence, desire me, however, to make the following observations upon some of the remarks contained in Mr. Adderley's letter, in order that there may be no misapprehension as to the bearing of their proposals :

The Committee are aware that, as is stated in Mr. Adderley's letter, in order to prepare the country for settlement, very considerable annual outlay will have to be incurred, and that for this charge, the produce of the early sales of lands is the natural resource ; but they are at a loss to understand upon what ground it is alleged that their proposals would deprive the future Government of the ceded territory of " any prospect " for a long time at least " of receiving any income."

The only part of the territory in which it is probable that any early or extensive settlement will take place, is the part known as the Fertile Belt. It has been confidently asserted by independent persons who have travelled through the country, that a great part of this land is not inferior in quality, or in advantages of climate, to the adjoining United States territory now forming the State of Minnesota, and it has been justly pointed out that, being prairie land, it does not require much labour to render it fit for cultivation. But the price of land in Minnesota ranges, as the Committee are informed, from five shillings to one pound per acre. The Committee think, therefore, that the fixed payment of one shilling per acre, proposed by the Duke of Newcastle, and accepted by them as a basis of compensation, cannot be deemed to be unreasonable in so far as related to land sold within the limits set forth in Sir Edmund Head's letter of the 11th of November, 1863.

As regards any portions of land lying outside those limits.

which may possibly be sold, the Committee think it very improbable that such sales will take place except for mining purposes, in which case the payment of a shilling per acre could hardly be deemed excessive. In order to save trouble and to obviate disputes, therefore, the Committee proposed the fixed payment of one shilling per acre in respect of all sales wherever they may take place, and they believe that the arrangement would have been, on the whole, more favourable to Canada than that suggested by Mr. Adderley.

Mr. Adderley proceeds to remark with reference to Lord Kimberley's proposal, that the Company should retain certain reserves around their posts; that the reservations would amount to upwards of 500,000 acres. It was however stated by Lord Kimberley and the Deputy-Governor, at an interview with the Duke of Buckingham upon this subject, that the Committee were willing to confine their claim for reserves to the limits defined by Sir Edmund Head's letter of the 11th November, 1863; that they were prepared to agree that such reservations should be measured by the importance of the posts to which they were to be attached, and should in no case exceed 3,000 acres. The total quantity of land to be retained by the Company under this arrangement would not exceed 50,000 acres. The Committee cannot agree to the absolute exclusion of these reserves from all frontage to "rivers or tracks, roads or portages," which would render them entirely valueless, although they would have been ready to consider any reasonable limitation of these special advantages.

As regards the right of selecting lands for the Company in proportion to the quantities sold from time to time by the Government, the Committee desire to call Lord Granville's attention to the reasons given in Sir E. Head's letter of the 13th April, 1864, for adopting this mode of reservation in preference to that of "setting apart beforehand a number of isolated tracts of wild land, dotted over the surface of the colony, and calculated to impede the free flow of settlement in the territory." Their proposal was framed with reference

to sales in the fertile belt only, and it never entered into their minds to contemplate such contingencies as those suggested by Mr. Adderley's letter. In order, however to obviate all cavil upon this point, they would have been quite willing to limit the Company's right of selection to the case of lands sold or alienated within Sir E. Head's limits, provided that it were agreed that no alienations should take place beyond those limits, except either for distinctly public purposes or for the *bona fide* carrying on of agricultural or mining operations. As regards Mr. Adderley's proposal that the right of selection should be confined to five lots of 200 acres each, in each township as it is set out, the Committee can only remark that the character of this proposal must depend upon the size of the township, of which no indication has been given.

The Committee still adhere to the opinion that under the peculiar circumstances of the proposed transfer of their territory it would be reasonable that their wild lands should, for a limited time, be exempt from taxation, in order to allow them a fair opportunity of bringing them into profitable cultivation.

They observe that Mr. Adderley makes no reference to the tenth stipulation contained in Lord Kimberley's letter of the 13th May, viz., that until the stipulated sum of £1,000,000 sterling has been paid to the Company, no export duties shall be levied by Canada upon furs exported by the Company, nor any import duties on articles imported by them into the North Western territory, and into that part of Rupert's Land which is not included within the geographical limits laid down in Sir Edmund Head's letter of November 11th, 1863. This is a point to which the Committee attached very great importance. If it had been proposed by the Canadian Government to make a direct purchase of the Company's territory, and to pay the price for it at once, the Company would of course have accepted their fair share of the burdens which annexation might be expected to involve. But if the purchase money is to be withheld until the Canadian Government have sold off 20,-

000,000 acres of the land, or have realized a considerable sum by the produce of mining operations, it is reasonable that the pressure of the fiscal burdens, which would fall almost exclusively upon the Company's trade, should be suspended also. Otherwise it might happen that, in consequence of the neglect or the inability of the Canadian Government to proceed with the settlement of the territory, the Company would be subjected to very heavy contributions to the colonial treasury without receiving the smallest benefit in return. As an illustration of the extent to which they might thus be injured were no limitation placed upon the colonial power of taxation, I may observe that, according to the present Canadian tariff, the duty upon the value of the Company's imports alone would amount to about £20,000 a-year, while any export duty that might be laid upon their furs would operate still further to their disadvantage. The Committee feel confident that Lord Granville will acknowledge the reasonableness of their taking precautions against such a contingency.

The Committee have desired me to offer to Lord Granville these explanations of their proposals, in order to show that they have done their best to comply with the desire of her Majesty's Government, that they should submit a scheme founded on the principles of the negotiations of 1864. They have not, however, failed to perceive from an early period of the lengthened correspondence which has taken place between them and the Government, that those principles necessarily gave rise to many difficulties; and they have felt this the more strongly since the negotiations originally commenced between the Company and Her Majesty's Government have virtually become negotiations between the Company and the Government of Canada. They cannot disguise from themselves the danger which exists that arrangements so complicated, and involving so many topics for future discussion, are likely to lead to the Company's being placed in a position of antagonism to the Government of Canada, and to the creation of a state of things injurious not only to their own interests but to the

welfare of the country itself. They are sincerely anxious to co-operate with the Canadian Government in the settlement, development and improvement of the territories with which they have been so long connected, and they believe that, if the arrangement between them can be placed on a satisfactory footing, it will be in their power to render material assistance to the Colonial authorities in this respect. They believe that, if a simpler arrangement than that which has recently been under discussion could be adopted, and if the Canadian Government were prepared to complete the purchase of the territory at once, by the payment of a sum of money or by the delivery of bonds, it would conduce to a more satisfactory result than the prolongation of a controversy as to the minute points of such a scheme as has been under consideration.

Should Lord Granville be of this opinion, and should his Lordship think it desirable to recommend any proposal of the kind to the Canadian Delegates, this Committee will gladly place themselves in fuller communication with him on the subject.

I have, &c.,

(Signed) STAFFORD H. NORTHCOTE,
Governor.

Sir Frederic Rogers, Bart.

Sir F. Rogers to Sir G. Cartier and Wm. McDougall.

DOWNING STREET, 18th January, 1869.

GENTLEMEN,—I am directed by Earl Granville to transmit to you, for any observations which you may wish to offer upon it, the enclosed copy of a letter from the Hudson's Bay Company in answer to the proposals made to them by the Duke of Buckingham and Chandos in the letter from this Department of the 1st of December last, with respect to the proposed

cession to the Crown of the Company's territorial rights in British North America.

I am, Gentlemen,

Your obedient servant,

(Signed)

FREDERIC ROGERS.

Sir G. E. Cartier, Bart.,

W. McDougall, Esq., C.B.

Sir. Geo. E. Cartier and Mr. McDougall to Sir F. Rogers.

WESTMINSTER PALACE HOTEL,
LONDON, *February 8th*, 1869.

SIR,—We have the honour to acknowledge the receipt of your letter of the 18th ultimo, enclosing a copy of Sir Stafford Northcote's letter of the 13th ultimo, in reply to proposals made to the Hudson's Bay Company for the cession to the Crown of their territorial rights in British America, by His Grace the Duke of Buckingham and Chandos, in the letter of Mr. Adderley of 1st December last

You state that Earl Granville directed you to transmit this document to us for any observations which we may wish to offer upon it. His Lordship's courtesy and consideration in sending us a copy of Sir Stafford Northcote's letter and inviting us to express our views upon it are gratefully acknowledged, but upon reflection we thought it would be expedient to refrain from any formal expression of our opinion on new and indefinite propositions, until we had received some intimation of the view which his Lordship was likely himself to take of them, or of the policy in respect to the general question which her Majesty's present advisers intend to adopt.

At an interview with which we were favoured by Earl Granville on the 26th ultimo, he expressed his preference for a less complicated mode of dealing with the Hudson's Bay question than that proposed by the Duke of Buckingham and

Chandos, and requested us to communicate to him our observations on the reply of Sir Stafford Northcote, and especially on the proposition with which his letter concludes, viz., that the Canadian Government should "complete the purchase of the territory at once, by a payment of a sum of money or by the delivery of bonds."

As we have had but few opportunities to confer with his Lordship since his accession to office, it may be proper, before considering Sir Stafford Northcote's letter, to state the position of the Canadian Government, as we apprehend it, in this negotiation.

The British North America Act of 1867 affirmed the policy of uniting under one government all the colonies, provinces, and territories of British North America. Three provinces were united at once, and provision was made by the 146th section, for the admission into the union, of the remaining colonies, on address to her Majesty by their respective Legislatures and the Parliament of Canada.

The North-West territories and Rupert's Land, or either of them, are to be admitted on the address of the Parliament of Canada alone, and on such terms and conditions as the Canadian Parliament may, in its address express, and her Majesty approve.

In pursuance of the policy of the Imperial Parliament thus distinctly affirmed, the Canadian Parliament at its first session under the new constitution, adopted an address to her Majesty for the incorporation of the North-West territory and Ruperts Land with the Dominion of Canada. The terms and conditions expressed in the address were,—

1st. That Canada should undertake the duties and obligations of Government, and legislation in respect of those territories.

2nd. That the legal rights of any corporation, company, or individul within the territory should be respected, and that provision should be made for that purpose by placing those rights under the protection of courts of competent jurisdiction.

3rd. That the claims of the Indian tribes to compensation for lands required for purposes of settlement should be considered and settled, in conformity with the equitable principles which have uniformly governed the British Crown in its dealings with the aborigines.

The above were the only terms and conditions which, in the opinion of the Canadian Parliament, it was expedient to insert in the Order in Council, authorised by the 146th section.

His Grace the Duke of Buckingham and Chandos, on receiving the address of the Canadian Parliament, consulted the law officers of the Crown, who advised, among other things, "that there would be much difficulty created by the existence of the charter" of the Hudson Bay Company, to "putting into execution the powers of the 140th (146th) section of the British America Act, 1867, assuming that the Hudson's Bay Company were adverse to the union."

A bill was thereupon carried through the Imperial Parliament, apparently to remove the "difficulties" which the law officers had discovered. It reverses the order of procedure contemplated by the Act of 1867, and observed by the Canadian Parliament in its address, and makes the assent of the Company a condition precedent to the transfer.

The Canadian Government were not consulted as to the terms of this Act; they could not understand why it was necessary, and greatly doubted the expediency of passing it.

The Duke of Buckingham and Chandos, having opened negotiations with the Hudson's Bay Company under the authority of the Act last mentioned, invited a delegation from the Canadian Government to confer with him in this country. The undersigned, duly commissioned for that purpose, repaired to London in October last, and had frequent interviews with his Grace before his retirement from office.

The proposals submitted to the Company by the late Government in the letter of Mr. Adderley of the 1st December last, were not made at our suggestion, although we were disposed to think (and so informed his Grace) that if the Company

accepted them, the Canadian Parliament might be persuaded to undertake the duties of legislation and government in the territories on the conditions specified.

The Company, through Sir Stafford Northcote, have declined to accept either the principle or the mode of settlement proposed by the late Government, but suggest a new and summary method of closing the negotiations, by demanding that the Canadian Government should, by a payment in cash or bonds, "complete the purchase of the territory at once." No sum is mentioned, and no data given from which it can be inferred. Under these circumstances, we are asked, as representatives of the Canadian Government, to communicate to Earl Granville any observations we may wish to offer on this reply and proposition of the Company.

His Lordship will readily perceive from the foregoing recital, that, as representatives of the Canadian Government, we are in the position of spectators of a negotiation, begun and carried on upon principles and under conditions to which we are strangers, rather than that of assenting principals, responsible for its initiation and bound by its results.

Without undertaking, therefore, that our views on every point will be approved by the Canadian Government, we proceed most respectfully to offer a few observations on Sir Stafford Northcote's reply to the recent proposals of the Imperial Government.

It will be observed that two things are assumed in these proposals to the Company, which the Canadian Government have always disputed.

1st. That the Charter of Charles II. is still valid, and grants the right of soil, or freehold, of Rupert's Land to the Company.

2nd. That Rupert's Land includes the so-called "Fertile Belt," extending from the Lake of the Woods to the Rocky Mountains.

The law officers of the Crown in England have, on two or three occasions, given their opinion in favour of the first assumption, but never, so far as we are aware, in favour of the

second. The report of the law officers in 1857 admits that the geographical extent of the territory granted must be determined by excluding the country that "could have been rightfully claimed by the French as falling within the boundaries of Canada," (which the Charter itself excludes by express words), and states that "the assertion of ownership on important public occasions, as at the treaties of Ryswick and Utrecht," should be considered; and also "the effect of the Acts of 1774 and 1791." The most recent opinion of the law officers of the Crown which we have seen (January 6th, 1868), as to the rights of the Hudson's Bay Company, does not even by implication support their present claim to the fee-simple of nearly one-third of the American continent. On the contrary, Sir John Karslake and his colleagues conclude their report with the emphatic statement that it is "very necessary, before any union of Rupert's Land with Canada is effected, that the true limits of the territory and possessions held under the charter should be accurately defined." An assumption, therefore, which covers so much ground, and is unsupported by any competent legal authority: which ignores the repeated protests and claims of Canada, and seeks to supply a basis upon which a surrender for valuable consideration may be made, is, to say the least, a most favourable assumption for the Company. We notice these points in Mr. Adderley's letter before remarking on Sir Stafford Northcote's reply, to prevent the possible inference that we have acquiesced in them.

Sir Stafford Northcote assures Lord Granville that the Company "continues sincerely anxious to promote the object with a view to which the Company was re-constructed five and a-half years ago, viz., the gradual settlement of such portions of their territory as admit of colonization." It would be tedious to quote the numerous and positive averments by members and governors of the Hudson's Bay Company, in the course of official inquiries during the last fifty years, that their territories (in which they included the Red river and the Saskatchewan districts) are totally unfit for colonization. The

evidence of Sir George Simpson before the House of Commons Committee of 1857, is a fair sample of the views heretofore entertained and avowed by the representatives of the Company. (*Vide* Commons Report, 1857; Questions 716, 717, 718, 719, &c.) Mr. Ellice, for many years the ruling spirit of the Company, declared before the same committee that the Red river settlement was an "unwise speculation," and "had failed;" that "the climate is not favourable;" that the Saskatchewan is a country capable of settlement only when "the population of America becomes so dense that they are forced into situations less fit for settlement than those they occupy now;" that the winters are "rigorous," and the country "badly off for fuel," &c. (Questions 5,840 and 5,847).

With such views of the unfitness of the country for settlement, and avowing their belief that colonization and the fur-trade could not exist together, it is not surprising that the Company have always cherished the latter, which was profitable, and discouraged, and, as far as possible, prevented the former, which had proved an "unwise speculation." It is true that the Company was "re-constructed" in 1863, with loud promises of a new policy. A great road across the continent was to be made, a telegraph line was to be put up, and emigration and colonization developed on a large scale. The Duke of Newcastle, then Secretary of State for the Colonies, was so much impressed by the zeal and public spirit of the gentlemen who effected the re-construction, that he wrote despatches to the Canadian Government on their behalf, and evidently believed that a new era was about to open in the North-West, and the wild animals and fur traders retreat before the march of "European" settlers. The stock of the old Company, worth in the market about £1,000,000, was bought up, and by some process which we are unable to describe, became £2,000,000. A show of anxiety to open postal and telegraphic communication was made, and "heads of proposals" were submitted to the Governments of Canada and British Columbia, which on examination were found to

embrace a line of telegraph only, with the modest suggestion that the two Governments should guarantee the Company a profit of not less than 4 per cent. on their expenditure! A proposal so absurd could only have been made to be rejected, and it was rejected accordingly. The surplus capital of the re-constructed Company, which was called up for the avowed purpose of opening their territories to "European colonization, under a liberal and systematic scheme of land settlement," has never been applied to that purpose. Five and a-half years have passed since the grand scheme was announced to the world, but no European emigrants have been sent out, no attempts to colonize have been made. Sir Stafford Northcote was not probably aware, when he vouched for the *bona fides* of the Hudson's Bay Company as promoters of colonization, that a solemn vote of the shareholders was taken in the month of November, 1866, which condemned and rejected the policy of colonization, absolutely and definitively.

While unable, for the reason stated, to concur in Sir Stafford Northcote's assurance that the Hudson's Bay Company are anxious to promote colonization, we are gratified to learn that they "adhere" to the resolution of 28th August, 1863, that the time has come when it is expedient that "the authority executive and judicial over the Red River Settlement and the South-Western portion of Rupert's Land, should be vested in officers deriving such authority directly from the Crown."

The first remark we have to make upon this reference to the resolution of 1863 is, that it admits the continued incapacity of the Company as a *governing* power; the second, that if this was true in 1863,—if at that time it became expedient, to substitute the authority of the Crown for that of the Company,—it is much more expedient, if not absolutely necessary, now; and third, that if the Company are to be relieved of the duty and cost of government which their Charter imposes, and which they admit they do not and cannot properly discharge, compensation should be made, not to the Company, as is claimed, but *by* the Company to those who take the burden off their shoulders.

We confess we have failed to discover any evidence, and therefore cannot believe, that the Company have "cheerfully" accepted the decision of her Majesty's Government, "that the whole of the Company's territory should, under proper conditions, be united with Canada." A brief notice of the *acts* in contrast with the *professions* of the Company, will, we think, account for the ill success of our *résearches* and justify our incredulity.

The representatives of the Company, while declaring before the House of Commons Committee in 1857 (as we have already shown) that their territories were "unfit for settlement," professed their readiness to surrender any portion of them that might be desired by the Imperial or Canadian Government for that purpose.

Mr. Ellice declared in the most unqualified terms, not only that the Company was willing to surrender, but that it was the duty of the Government to see that no mere trading corporation obstructed "for one moment," nor to the extent of "one acre of land fit for settlement," the "dominion of the actual settlers." (Commons Report, 1857; questions 5,859, 5,860 and 5,983).

The Governor of the Company informed the Colonial Secretary (18th July, 1857,) that any inquiry into the "geographical extent of the territory granted by their Charter," which the law officers had recommended, was of little importance, because, if the object of the inquiry was "to obtain for Canada land fit for cultivation and the establishment of agricultural settlers, the Directors are already prepared to recommend to the shareholders of the Company to cede any lands which may be required for that purpose. The terms of such cession," he assured Mr. Labouchere, "would be a matter of no difficulty between her Majesty's Government and the Company."

Mr. Ellice had previously told the House of Commons Committee, that the question of boundary was "of no importance at all," because "if the province of Canada requires any part of the territory, or the whole of it, for purposes of settlement,

it ought not to be permitted for one moment to remain in the hands of the Hudson's Bay Company." He added that less money than would be spent in a litigation upon the subject would be sufficient to indemnify the Hudson's Bay Company for any claim which they could have on giving up any disputed part of their territory."

These assurances induced the Committee to negative propositions for ascertaining by a judicial inquiry the validity of the Charter, or the position of boundaries, and to report in favour of annexing to Canada "such portion of the land in her neighbourhood as may be available to her for the purposes of settlement, with which she is willing to open and maintain communication, and for which she will provide the means of local administration." The Committee "trusted that there would be no difficulty in effecting arrangements as between her Majesty's Government and the Hudson's Bay Company for ceding the territory on equitable principles."

It may be proper to remind Earl Granville, that leading members of the Committee of 1857, taking the offers of the Company on the subject of colonization to mean, what the language of the representatives imported, strongly opposed the recommendation to leave the question open for "amicable adjustment" upon "equitable principles," with the certainty of protracted negotiations and a chance of ultimate disagreement. Mr. Gladstone accordingly submitted resolutions for a prompt and definite settlement of the whole question. He proposed—

1st. "That the country capable of colonization should be withdrawn from the jurisdiction of the Hudson's Bay Company."

2nd. "That the country incapable of colonization should remain within their jurisdiction."

He proposed that in the country remaining within their jurisdiction power should be reserved to her Majesty's Government to make grants "for the purposes of mines and fisheries, but with due regard to the immunities and trade of the company." No "immunities" were even suggested

with respect to the country which was to be withdrawn for colonization. He proposed to ignore the Charter, by declaring that the jurisdiction of the Company "should rest henceforth upon the basis of statute." He quoted the Governor's letter above referred to, "as an expression of the willingness of the Company to accept in principle the arrangement" he proposed, and ended with the suggestion that, "as the Company had tendered concessions which may prove sufficient to meet the case," no decision seemed necessary as to the question of raising a "judicial issue with the view of ascertaining the legal rights of the Company." The propositions of Mr. Gladstone were only lost in the Committee by the casting vote of the chairman.

Twelve years have passed since these offers were made by the Company and accepted by a Committee of Parliament. Every Colonial Secretary, from 1858 to the present moment, has attempted to carry out the recommendation of the Committee, with the assent of the Company, but without success. Two Acts of the Imperial Parliament have been passed, with provisions to facilitate the arrangement, but are yet without fruit. Sir Edward Bulwer (Lord Lytton) characterised the offers of the Company during his administration as "illusory," and declared that they "by no means met the exigencies of the case." He expressed his regret at a determination on their part which retains the very difficulty in the way of speedy and amicable settlement which he had sought to remove," and stated that if Canada declined to resort to "legal proceedings (which he had recommended) it would be his duty to consider whether negotiations with the Company can be resumed or whether in the last resort her Majesty's Government must take the matter into their own hands and proceed on their own account." (Mr. Merivale's letter to H. H. Berens, 9th March, 1859.) Sir Edward remained in office long enough to put an end to the Company's license of exclusive trade in British Columbia and the Indian territories, but not long enough to carry out his policy of "connecting the two sides of British

North America without the obstacle interposed by a proprietary jurisdiction between them."

The Duke of Newcastle opened negotiations with the Company in 1863-4 with much vigour. But after various proposals and counter-proposals, including the "reconstruction" of the Company, he was obliged to treat their propositions as "inadmissible."

Mr. Cardwell, during his administration, could not accept their proposals "without considerable modifications."

The Duke of Buckingham, after many discussions with the representatives of the Company, regretted to perceive that their proposals "did not afford much prospect of an arrangement being come to;" and in the communication to which the letter of Sir Stafford Northcote is a reply, declared himself "unable to recommend the adoption" of the terms demanded by the Company.

Our notice of what, in Sir Stafford Northcote's opinion, constitutes a "cheerful" acceptance of the decision of her Majesty's Government, would be incomplete, if we did not remind Earl Granville that the Company's "proper conditions" for the surrender of that portion of the North-Western territories, for which they can show no title but such as may be derived from the possession of a few trading posts, established there within the last fifty years, rose from a question of "no importance at all" in 1857, or at most, of "less money than would be spent in a litigation on the subject" (House of Commons Report, Question 5,834), to the retention, in 1863, in fee-simple, of *half* the land proposed to be surrendered, with various other conditions, including a guarantee by the governments of Canada and British Columbia, of an annual profit on the Company's expenditures for improvements on their own property! In 1864, these conditions took the form of a demand, first, to be paid £1,000,000 sterling, from sales of lands and mines, with large reservations "to be selected by them," &c. ; and, secondly, to be paid £1,000,000 sterling in cash, with other terms and reservations favourable to the Company.

In 1868, these conditions for the surrender of territorial and governing rights over the *whole* territory, remained at £1,000,000, as in the first proposition of 1864, with large reservations of land at "selected" points, specially exempted from taxation, and with full liberty to carry on their trade free from the export and import duties, to which all other subjects of her Majesty in that country would be exposed.

In 1869, these various proposals, which no Secretary of State could possibly entertain, have all been apparently merged in one grand proposition to sell out "the territory at once for a sum of money," in cash or bonds, the amount of which is not stated.

We content ourselves under this head with the observation, that whatever others may be able to see in all these transactions, we are utterly unable to discover either a cheerful acceptance of the decision of any Government, or an honest disposition to fulfil the solemn pledges made to Parliament in 1857, on the faith of which the Company was unquestionably saved from judicial or legislative extinction.

Sir Stafford Northcote claims credit for the Company because they have "declined to encourage overtures which have been made to them by private persons for the purchase of portions of the Company's territory with a view to their colonization." Our information is (and we can give Earl Granville names and dates, if the point is deemed of any importance) that the only "overtures" of the kind mentioned which the Company have received, were not merely "encouraged," but suggested and concocted by prominent members of the Company, for the purpose of producing an impression on the Government, and with a view, not to colonization, but to *negotiation* and the Stock Market.

We are not sure that we understand the statement of Sir Stafford Northcote that the Company "have taken no step which would give rise to fresh complications or place any new difficulty in the way of the admission of their territory into the Confederation." The sale of land to private parties

for colonization (assuming that *bona fide* offers have been received from such parties) could not give rise to much complication, except in the affairs of the Company. If Sir Stafford hints at the negotiations which were lately reported to be going on with certain American speculators in London for denationalizing and Americanizing the Company with a view to the "admission of their territory" into the United States, instead of the Confederation, we respectfully submit that while such a difficulty might indeed be "new," the proper person to solve it would be Her Majesty's Attorney-General, with the aid of a court and jury of competent jurisdiction.

We do not understand that Earl Granville expects us to defend in detail the Duke of Buckingham's proposals, or to answer all the objections made to them by Sir Stafford Northcote. The Government of Canada, as we have already reminded his lordship, neither suggested the Act of Parliament nor the terms of the negotiation, which the late Secretary of State for the Colonies attempted to carry out under its authority. The Canadian plan of dealing with the question of the North-Western Territory and Rupert's Land, is set forth in the address of the Canadian Parliament to her Most Gracious Majesty, and we do not feel at liberty, as representatives, to suggest any other mode, until we are informed by her Majesty's Government that the one proposed is deemed impracticable.

Sir Stafford Northcote's suggestion that "the payment of a sum of money" for the purchase of the territory, would conduce to a more satisfactory result, is, we believe, the point upon which Earl Granville specially desires to have our views. Assuming that by "territory," he means the *whole* territory to which the Company lay claim, and that they are to continue as a trading corporation, retaining their posts, and allotments of land in their neighbourhood, as he states was agreed upon by the Duke of Buckingham and Lord Kimberley, we have to observe :

1. This proposition involves an abandonment of the *prin-*

ciple which two Secretaries of State (and it must be presumed, two successive administrations) declared, after much consideration, and in view of the transactions of 1857, was properly and justly applicable to this case, viz. : That the compensation should be derived from the future revenue of the territory itself, and payable only as it came into the hands of Government. This *principle* was also accepted by the Company in their communication of 18th April, 1864.

2. On the other hand, the principle of ascertaining and fixing a money value upon the territorial rights of the Company "in the British territory east of the Rocky Mountains, and north of the American and Canadian lines," and of extinguishing those rights by a payment "at once," was suggested, in 1865, by a delegation from the Canadian Government of that day, and assented to by Mr. Cardwell, then Secretary of State for the Colonies, and his colleagues.

If the latter principle and mode of settlement is now to be adopted, it is obvious that the first question is, What is the nature of these "rights," and what territories do they affect ? and the second, What are the rights, separated from the duties and burdens attached to them by the Charter, fairly worth ?

We shall not attempt to answer these questions fully in the present communication, but we venture to submit for Earl Granville's consideration a few facts and inferences, which cannot, we believe, be disputed, and which are essential elements in any calculation which may be attempted on the basis of a money purchase.

1. The Charter of Charles II. (and for the present, we raise no question as to its validity) could not and did not grant to the Hudson's Bay Company any territory in America which was not then (1670) subject to the Crown of England.

2. The Charter expressly excluded all lands, &c., then "possessed by the subjects of any other Christian prince or State."

3. By the treaty of St.-Germain-en-Laye (1632), the King

of England resigned to the King of France the sovereignty of Acadia, New France and Canada generally, and without limits.

4. "La Nouvelle France" was then understood to include the whole region of Hudson's Bay, as the maps and histories of the time, English and French, abundantly prove.

5. At the Treaty of Ryswick (1697), 27 years after the date of the Charter, the right of the French to "places situated in the Hudson's Bay" was distinctly admitted; and although commissioners were appointed (but never came to an agreement) to "examine and determine the pretensions which either of the said Kings hath to the places situate in the Hudson's Bay," and with "authority for settling the limits and confines of the lands to be restored on either side;" the places taken from the English (i. e. from the Hudson's Bay Company) by the French previous to the war, and "retaken by the English during this war, shall be left to the French by virtue of the foregoing (the 7th) article." In other words, the forts and factories of the Hudson's Bay Company, established in Hudson's Bay under pretence of their Charter and taken possession of by the French in time of peace, on the ground that they were an invasion of French territory, were restored, by the Treaty of Ryswick, to the French, and not to the Company.

6. By the Treaty of Utrecht, 1714, "the Bay and Straits of Hudson, together with all lands, seas, sea coasts, rivers, and places situate in the *Bay and Straits*, and which belong thereto," were finally ceded to Great Britain.

7. As no definite boundary was ever established between the possessions of the French in the interior and the English at Hudson's Bay, down to the Treaty of Paris, 1763, when the whole of Canada was ceded to Great Britain, the extent of the actual possession by the two nations for some period, say from the Treaty of Utrecht to the Treaty of Paris, affords the only rational and true basis for ascertaining that boundary.

8. The evidence is abundant and conclusive to prove that the French traded over, and possessed the whole of the country

known as the Winnipeg Basin and "Fertile Belt," from its discovery by Europeans down to the Treaty of Paris, and that the Hudson's Bay Company neither traded, nor established posts to the south or west of Lake Winnipeg, until many years after the cession of Canada to England.

9. No other or subsequent grant to the Company was ever made which could possibly extend their territorial rights under their Charter. The license to trade in the Indian territories, which they obtained in 1821, was revoked in 1858, and has not been renewed.

10. The country which, in view of these facts, must be excluded from the operation of the Charter, includes all the lands fit for cultivation and settlement in that part of British America.

It will be for Earl Granville to consider whether this Company is entitled to demand any payment whatever, for surrendering to the Crown that which already belongs to it. We confess our utter inability, upon any principle of law, or justice, or public policy, with which we are acquainted, to estimate the amount which ought to be paid under such circumstances. The only basis of computation we can discover, applicable to such a case, is the *cost* of the legal proceedings, if any be necessary, to recover possession. A person has taken possession of a part of your domain under the pretence that it is included in a deed which you gave him for some adjoining property before you purchased the domain. You want to get rid of him, but will be compelled to bring an action. He is artful, stubborn, wealthy and influential. He will be able to worry you with a tedious litigation. How many acres will you allow him to "reserve," and how much will you pay to save yourself the cost and trouble of a law suit? Compromises of this kind are not unknown in private life, and the motives and calculations which govern them may be applicable to the present case. We recommend this mode of computing the amount of the payment to be made for the surrender of the North-West territory, as distinguished from Rupert's Land, with all the more confidence, because it has already

been suggested by one of the ablest and most trusted of the representatives of the Company. (Vide evidence of Right Honourable E. Ellice, House of Commons Report, 1857, question 5,834.)

With respect to Rupert's Land, or the "lands and territories," "upon the coasts and confines of the seas, bays," &c., that lie "within the entrance of the straits commonly called Hudson's Straits," "not possessed by the subjects of any other Christian prince or state," a different rule, we admit, may be held to apply. Giving to the words of grant the widest construction, territorially, that could possibly be admitted by any judicial body with the facts of the case in evidence before it, or, giving to these words the construction which the Company themselves applied for a hundred years from the date of their Charter, the "rights" they propose to sell are of little commercial value. No revenue, we feel assured, will ever be derived from them. The fur trade is the only industry the country offers as a source of profit, and this, if we rightly understand Sir Stafford Northcote's suggestion, the Company wish to retain.

It has never been alleged, even by the most sanguine advocates of the new theory of the Company respecting land-sales, that any revenue can be derived from that source within the limits which we have assigned to Rupert's Land. The cost of Government there, inconsiderable though it may be, will always exceed any possible revenue. We are thus led to the same conclusion as in the case of the territory claimed, but not owned, by the Company, viz., that what they propose to sell has no pecuniary or commercial value. They are there, however, by at least a show of right. Being there, they obstruct the progress of Imperial and Colonial policy, and put in jeopardy the sovereign rights of the Crown over one-third (and as some think, even a larger portion) of the North American Continent. "What is it worth to have this obstruction *quietly* removed?" This is perhaps the true question; but the answer, we submit, belongs rather to Her Majesty's Government—which has the power, in the event of resistance, to remove

the evil by a summary process—than to those who are little more than spectators of the negotiation.

Earl Granville is aware that several attempts have been made since 1857 to arrive at a definite agreement on the subject of compensation. The suggestions and proposals on each side, together with the actual market value of the Company's stock at different periods, supply data which his Lordship may deem of importance; and we therefore respectfully submit our views as to the conclusions which may be deduced from them.

The first attempt of the Imperial Government to estimate, and express in pounds sterling, the compensation which it would be reasonable to offer to the Company, was made by the Duke of Newcastle in 1864. The greatest sum which, after "very grave consideration," his Grace felt himself able to propose for the surrender of the country west of Lake Winnipeg was £250,000. But the payment was subject to the following conditions:—

1. £150,000 was to be derived from the sale of lands by Government within the territory. The payment was to be made at the rate of 1s. per acre sold, but to be entirely dependent on the Government's receipts.

2. Payments were to cease whenever they reached £150,000; and absolutely at the end of fifty years.

3. The Company was to be paid one-fourth of the sum received by Government for export duty on gold or for mining licenses or leases for gold-mining in the territory, for fifty years, or until the aggregate amounted to £100,000.

4. The payment of any part of the £250,000 was contingent on the ability of the Company to place Her Majesty's Government in possession of an "indisputable title" to the territory ceded by them as against the claims of Canada.

The last condition was objected to by the Company on the ground that they could only give such title as they had, which they contended "must be taken for better for worse." The Duke of Newcastle renewed his offer, modifying the last condition into a stipulation that, in case it should be found

advisable, the territory eastward of a line passing through Lake Winnipeg and Lake of the Woods might be ceded or annexed to Canada, in which case nothing would be payable to the Company in respect of *that* territory.

The present value in cash of such an offer, subject to the conditions and contingencies specified, would be very difficult to ascertain. The revenue from export duty on gold and for licenses would probably be *nil*. The revenue from land sales, if the costs of surveys, management, and necessary roads were deducted, would be *nil* also. It is very doubtful whether, if these deductions be made, the revenue from land sales in the provinces of Canada from the cession in 1763 to the present time would show a surplus.

Sir Stafford Northcote quotes the price of land in Minnesota, and thence infers the value of lands in the Red River and Saskatchewan districts, which lie from five to ten degrees further north, and are still in the possession of the wild Indians of the plain. But we think it will be found that the lands in Minnesota, which sell for "one pound per acre," are either private lands in the neighbourhood of towns, or the property of railway companies, on or near which millions of dollars have been expended to make them saleable. They are certainly not *public* lands unimproved by public expenditure. Sir Stafford ought to have mentioned at the same time a fact, which we believe is known to every emigrant who leaves the British Isles for America, that in the Western States of the Union, and in the Provinces of Canada, wild lands are now given to settlers as "free grants," and we may add, this policy is more likely to be extended than reversed. To talk of the *value* of public lands as a source of revenue, distant from one to two thousand miles from available markets, and without roads or navigable waters by which to approach them, is to contradict all experience, or to assume that the cost of surveys and management, and of canals, roads, or other improvements for their development and settlement, will be supplied by those who *do not own them*, for the benefit of those who do.

But in order to arrive at some result that can be expressed in figures, we will assume that the sum ascertained by the Duke of Newcastle to be a sufficient "compensation" would, under his proposition, have been paid within 50 years, and at an average rate per annum. We thus give the Company the benefit of all the doubts in the case, and reduce the question to a simple problem in arithmetic: What is the present value of an annuity of £5,000 per annum for fifty years?

That value, we submit, is the highest amount in cash which can be claimed as an equivalent for the offer made to the Company in 1864 by his Grace the Duke of Newcastle.

The next offer of the Imperial Government which mentions a specific sum, is that made by his Grace the Duke of Buckingham and Chandos, on the 1st December last. It differs from the previous offer in several important particulars.

1. It embraces the *whole* of the territory claimed by the Company.

2. It proposes to allow the Company to retain their "posts" and certain allotments of lands in their vicinity, with a small reservation in each township as it is surveyed.

3. It proposes to allow the Company one-quarter of the receipts from land (free grants being treated as sales at 1s. per acre), and one quarter of the sum received by Government as an export duty for gold and silver.

4. It limits the amount to be received under these heads conjointly, at £1,000,000 sterling.

The other stipulations are unimportant for the purpose of ascertaining the cash equivalent of the proposition.

It is evident that the "unknown quantities" in this equation are as difficult to find as in the first. We know the *total* sum to be paid, and the *proportion* of the receipts from lands and mines applicable for its payment; but we do not know the average annual sum likely to be realized from their sale. The minimum price is fixed at 1s. per acre, and it is doubtful if, under the proposed arrangement, the price would ever be found to exceed that sum. There is one term still to be ascer-

tained—the average *number* of acres per annum likely to be sold and granted. A crude guess is all that the case admits of. If we take Upper Canada, possessing many advantages for early and rapid settlement of which, unfortunately, the remote territories of the North-West are deprived, we find that from its erection into a separate province, down to 1868, about 22 millions of acres had been disposed of by sale and grant, or an average of about 286,000 acres per annum.

Assuming that the same rate of sale, &c., is maintained in the North-West Territories (which all the old Hudson Bay authorities who know the country would pronounce a bold assumption), we have reduced the question to a simple reference to the annuity tables as before, viz., What is the present value of an annuity of £3,575 per annum for 280 years?

We have omitted from the last term the one-fourth of the Government receipts from gold and silver, for two reasons. 1st, It has not been shewn that there are gold or silver mines in the territory, that will pay for working. 2nd, All the attempts heretofore made to obtain a revenue from such sources in Canada have failed, and public opinion has forced the local governments to adopt the policy of what may be called “free mining,” or cheap lands for the miners, and abolition of royalties and imposts, except to meet the cost of preserving the peace, and of surveys and necessary supervision.

There is another proposition on the Government side, which bears on the question of “compensation.” It results from the agreement between the representatives of the Government of Canada, and Her Majesty’s Government in 1865, and containing fewer elements of uncertainty than propositions which involve questions of Government policy, emigration, land sales, &c.; it can be reduced to a cash value with greater exactitude.

Mr. Cardwell describes the agreement as follows:—“On the fourth point, the subject of the North-Western Territory, the Canadian Ministers desired that that territory should be *made over* to Canada, and undertook to negotiate with the

Hudson's Bay Company for the termination of their rights on condition that the indemnity, if any, should be paid by a loan to be raised by Canada under the Imperial guarantee. With the sanction of the Cabinet, we assented to this proposal—undertaking, that if the negotiation should be successful, we on the part of the Crown, being satisfied that the amount of the indemnity was reasonable, and the security sufficient, would apply to the Imperial Parliament to sanction the agreement, and to guarantee the amount."

The Canadian delegates reported on the subject with a little more detail. "We accordingly proposed to the Imperial Ministers that the whole British territory east of the Rocky Mountains, and north of the American or Canadian lines, should be made over to Canada, subject to such rights as the Hudson's Bay Company might be able to establish, and that the compensation to that Company (if any were found to be due) should be met by a loan guaranteed by Great Britain. The Imperial Government consented to this, and a careful investigation of the case satisfies us that the compensation to the Hudson's Bay Company cannot, under any circumstances, be onerous. It is but two years since the present Hudson's Bay Company purchased the entire property of the old Company; they paid £1,500,000 for the entire property and assets, in which were included a large sum of cash on hand, large landed properties in British Columbia and elsewhere, not included in our arrangement, a very large claim against the United States Government, under the Oregon treaty; and ships, goods, pelts and business premises in England and Canada, valued at £1,023,569. The value of the territorial rights of the Company, therefore, in the estimation of the Company itself, will be easily arrived at."

The principle which this agreement between the two Governments recognizes as applicable to the case, appears to be—compensation in money for the ascertained rights of the Company, after deducting the value of the property retained by them. The words "if any," and "if any were found to be

due," import that, in the opinion of both parties, it was possible, if not probable, that after making the deductions, no compensation would be "due."

The basis of the calculation which seems to have been made, or agreed upon, is very simple. The old Hudson Bay Company had recently sold all the rights and property of the Company, of every description, for the sum of £1,500,000. An inventory, agreed to by both sellers and purchasers, set down the assets, exclusive of "Territorial Rights," as follows :

" 1. The assets (exclusive of Nos. 2 and 3) of the Hudson's Bay Company, recently and specially valued by competent valuers,	£1,023,569
" 2. The landed territory (not valued)	
" 3. A cash balance of... ..	£370,000
	<hr/>
	£1,393,569"
	<hr/>

On the face of their own statement, £1,500,000 less the above sum, or £106,431, was the amount which the new purchasers actually paid for the "Landed Territory." Under the agreement of 1865, this seems to be the highest sum which Mr. Cardwell and the representatives of the Canadian Government thought could in any event be demanded by the Company as indemnity or compensation for the surrender of the rights they "would be able to establish."

We have thus attempted to convert into their equivalents in cash, the two offers made to the Company since 1857 by the Imperial Government, and to ascertain the amount of the indemnity contemplated by Mr. Cardwell and the Canadian delegates in the arrangements of 1865. To arrive at any result, we have had to assume figures which, according to our experience, the facts of a new country will be more likely to reduce than to increase. We have also omitted conditions either implied or expressed in the proposals of 1864 and 1868, which we believe would have imposed considerable expense upon the Company.

There is another mode of estimating the amount to be paid, on the principle of compensating for actual loss only, which remains to be considered.

The stock of the Company has for some time been quoted at an average of $13\frac{1}{2}$. The capital is, nominally, £2,000,000, and the shares £20—the value of the stock, therefore, in cash, assuming that the whole of it could be sold at the market rate, is £1,350,000, or £43,569 less than the value, according to their own estimate, in 1863, of the Company's assets, *exclusive* of the "landed territory." The money obtained from the public for shares, beyond the £1,500,000 paid to the old shareholders, will no doubt be amply sufficient to make good any deficiency in the valuation of 1863.

From a consideration of these data, we submit that, if the validity of the Charter is not now to be questioned; if the territorial extent of the country affected by it is not to be defined; if the claim of Canada to include within her boundaries a large portion, if not the whole, of the country occupied by the French at the time of the cession in 1763, is not to be investigated, and finally determined; if the admitted incapacity and the notorious neglect of the Company to perform the duties of government (which were part of the consideration for the *rights* conceded by the Charter), are not to be taken as sufficient on public grounds to justify cancellation, and re-entry by the Crown—then the very highest indemnity which ought to be paid, in cash, for a surrender of the territorial claims of the Company, with the reservations and other privileges offered by His Grace the Duke of Buckingham and Chandos, is the sum indicated by the foregoing computations.

We must, in conclusion, express to Earl Granville our strong conviction that no *money* offer, which either the Imperial or the Canadian Government would deem reasonable, will be accepted by the Company, and that to delay the organization of constitutional government in the North-West Territory until the Hudson's Bay Company consent to reasonable terms of surrender, is to hinder the success of Confede-

ration in British America, and to imperil the interests and authority of the British Crown in the territories now occupied by the Company.

We therefore respectfully submit for Earl Granville's consideration, whether it is not expedient that the Address of the Canadian Parliament be at once acted upon, under the authority of the Imperial Act of 1867.

But, if his Lordship should see any sufficient legal or other objection to that course, then we ask, on behalf of the Dominion Government, for the immediate transfer to that Government of the "North-West Territory," or all that part of British North America, from Canada on the east, to British Columbia, Alaska, and the Arctic Ocean, on the west and north, not heretofore validly granted to and now held by "The Governor and Company of Adventurers of England trading into Hudson's Bay," by virtue of a Charter of King Charles the Second, issued about the year 1670.

We have the honour to be,

Sir,

Your obedient servants,

(Signed)

GEO. ET. CARTIER.

WM. MACDOUGALL.

Sir Frederic Rogers, Bart., &c.,
Colonial Office.

APPENDIX O.

EXTRACT FROM VOL. I., POWNALL'S MANUSCRIPTS, "TRADE"
(Page 64).

A Deduction of the Right and Title of the Crown of Great Britain and therein, of Our Most Gracious Sovereign Lady, Queen Anne, to all the streights, bays, seas, rivers, lakes, creeks, islands, shores, lands, territories and places whatsoever within Hudson's Streights and Hudson's Bay, and of the right and property of the Hudson's Bay Company, derived from the Imperial Crown of Great Britain by letters-

patent of incorporation, and a free grant of all the premises from King Charles ye Second, Ao. 1670.

That Hudson's Bay (with all that belongs thereto, within Hudson's Streights, in North America), was first discovered by Sr. Sebastian Cabbat, Grand Pilot to King Henry the Seventh, who gave English names to several places of the said Bay.

Sr. Martin Furbisher, in Queen Elizabeth's time, made three voyages to the said Bay in 1576, 1577 and 1578, and gave English names to several places there.

Captain Davis made three voyages thither in the year 1585, 1587 and 1588, and gave English names to several parts of the said Bay.

Henry Hudson, an Englishman, sailed to the Streights and Bay, from him called Hudson's Streights and Hudson's Bay, and keeps that denomination to this day in all the authentic maps in ye world, and even in the maps of the best geography of France. The said Hudson stayed a whole winter there, took possession thereof in the name of the King of England, traded with the salvages, and gave names to several other parts of the Streights and Bay.

Sir Thomas Button pursued the discovery and possessions of the aforesaid Hudson, sailed into the Streights and Bay with two ships, and particularly into Port Nelson, where he wintered, and buried the commander of his ship there, in memory of whom he gave it the name of Port Nelson, and called that particular bay Button's Bay (as it is still called in the maps), took possession thereof in the name of his master, King James the First, and gave several other English names to other places in the Bay, and erected a cross there, declaring thereon the right of the Crown of England.

Captain Luke Fox, by command of King Charles the First, made a voyage to Hudson's Bay, and amongst other places entered Port Nelson, and finding there the cross erected by Sir William Button, with the inscription defaced, and almost worn-out, he erected it again with a new inscription, declar-

ing the right and possession of his then Majesty King Charles the First, named the adjacent country New North Wales, and published a journal of his voyage. *Note.*—That the troubles and civil wars which soon after broke out in England, might be one principal cause why those voyages were not prosecuted, trade in general then failing, and navigation and discoveries wanting the encouragement of the Government—till after the Restoration of King Charles the Second. Yet it is observable that all that while (for so many years) that those places and countries lay neglected and unfrequented of the navigation or commerce of any European nation. The French do not in the least pretend to have then visited those parts, to have formed a possession, or attempted any commerce with any people upon those coasts, nor do they pretend that ever any French vessel sailed Hudson's Streights or Hudson's Bay till of late years.

It was, then, after the happy Restoration of King Charles the Second, that trade and commerce began to revive, and in particular that from noblemen and other public-spirited Englishmen, not unmindful of the discovery and right of the Crown of England to those parts in America, designed at their own charge to adventure the establishing of a regular and constant trade to Hudson's Bay, and to settle forts and factories, whereby to invite the Indian nations (who lived like savages, many hundred leagues up in the country), down to their factories, for a constant and yearly intercourse of trade, which was never attempted by such settlements, and to reside in that inhospitable country, before the aforesaid English Adventurers undertook the same.

Wherefore, after a long time of consultation, and the necessary preparations for so great a charge, in the year 1667, one Zachary Gilham was provided of a ship and goods in London, sailed through Hudson's Bay to the bottom of the Bay, settled a trade, and built a fort there, which he called Charles Fort, on a river which he named Rupert's River, in honour to Prince Rupert, who was pleased to be concerned with, and

was one of those Adventurers ; in which place the Hudson's Bay Company continued a trade, and had there a factory, until the same was unjustly taken from them by the French, in time of peace.

Another voyage was undertaken by the same Adventurers, and one Captain Newland was sent, who entered Port Nelson, settled there, and anew declared right and title of his Majesty to that river and the countrys adjacent, and there fixed up his Majesty's Arms, as a mark of his sovereignty over the said places.

After the charge of those voyages, and the experience by these settlements, that a great trade might be brought to England by beavers, furs and other commodities, for the just encouragement of so good and public a benefit, and the persons that had laboured in it, his then Majesty King Charles the Second was graciously pleased, in the year 1670, according to the undoubted and inherent right of His Imperial Crown of England, by his Royal letters-patent to incorporate the said Adventurers, and to grant unto His Highness Prince Rupert, the Duke of Albemarle, Earl of Craven, Lord Arlington, Lord Ashley and divers others and their successors for ever, all the lands and territories aforesaid, to be reckoned and reputed as one of His Majesty's plantations and colonies in America, by the name of Rupert's Land, and further, to create and constitute them and their successors the true and absolute lords and proprietors of the same ; and of all the territories, limits and places thereto belonging, to have, hold, possess and enjoy the same for ever, as of His Majesty's mannor of East Greenwich, in free and common soccage, &c.

In the same year the Company so incorporated sent out one Charles Bailly as Governor of their factories and settlements in the Bay, with whom Monsieur Frontenac, then Governor of Canada, by letters and otherwise, entertained a good correspondence, not in the least complaining in several years of any pretended injury done to the French, by the said Companies settling a trade and building of Forts at the bottom of the Bay-

The said Charles Baily (as the Company's Governor) sent a ship from the bottom of the Bay, called the *Imploy*, to Port Nelson, to settle a trade there with the natives.


As did also Captain Draper, with the ship *Albemarle*.

But after about 15 years' labour and charge, continual voyages, Factorys and Settlements, and the trade with the natives established; the French began to annoy this new and growing Trade; and thought it worth their while to study some pretences to invade and rob the English, and to deprive them of some part of the said country.

When the English Company were building a Fort and settling a Trade at Port Nelson, the French, having formed a private expedition at Quebec, in Canada, by confederacy of one La Chanay, and other private persons, came suddenly with two ships into the said river of Port Nelson, and with a stronger force surprised the said Company's men, and dispossessed them of their place and settlement, carried them prisoners to Canada, and pretended to settle a Trade there themselves; but this was the first time that ever the French did sail a vessel into the Hudson's Bay since the beginning of the world. This was a piratical expedition, and the authors of it were prosecuted as such, by frequent memorials from hence at the Court of France, where the same was disowned by His most Christian Majesty, and satisfaction promised by him accordingly.

But as the French seldom want assurance for their pretensions or claim to anything for their advantage; so they never fail of artifice or force (when they can) to back such their pretences; and when by violence, rapine and murder, they got themselves into an unjust possession, as aforesaid, then they pretended to expostulate all by a treaty, (as if they were upon an even foot with the right possessor,) and they seconded this injurious invasion and assault, a year or two after, and by taking a ship of the Company's, one Edward Humes, Commander, with the goods, and carried the men away prisoners, and for above a year fed them on bread and water.

They formed a greater design, and went with a considerable



force overland, from Canada to the bottom of the Bay, and by force or treachery, surprised and took all the Company's factorys, therewith all the amunition, goods, stores, and merchandize therein, to a very great value, murdered and destroyed many of His Majesty's subjects; and all these invasions, seizures and depredations were in a time of peace, and the best correspondence between the two Crowns; which is an action scarce to be paralleled by any civilized nation; when the way is open for complaints to the Prince on either side.

Upon these repeated injuries, the said Company complained several times to His then Majesty King James the Second. Several memorials were presented at the French Court by the public Ministers then there, My Lord Preston, Sir Wm. Trumbal, and Mr. Skelton; at last his most Christian Majesty did appoint Commissioners to meet at London, to treat of those matters, and Monsieur Bonrepos was sent over hither, to be joined with Monsieur Bascillon, the French Ambassador in that affair, whereas many papers were exchanged on both sides (but were in that reign so advantageous to the French interest), they did not obtain one inch from the right of the Imperial Crown of Great Britain, nor from the property of the Hudson Bay Company. But on the contrary His then Majesty did declare, that his honour and the Company's interest were concerned therein and would have reparation for both.

At His late Majesty, King William Third, his happy accession to the Throne, the said Company put in a fresh petition and memorial to His Majesty, of their grievous suffering from the French, which His Majesty was greatly pleased to resent so far, that he made it one of the articles and grounds of a declaration of war against France.

And then by the late Treaty of Ryswick, Commissioners were appointed on both sides to examine and determine the rights and pretentions which either King had to the place, situated in Hudson's Bay; before which Commissioners the right and title of the Crown of England to the whole Streights and Bay of

Hudson was then clearly made out, which the French could never disprove; yet they still most unjustly keep possession of the greatest part thereof, which if they be permitted to enjoy, they will become sole masters of all Her Majesty's dominions and territorys in those parts, which are of great extent, and the undoubted right of the Crown of Great Britain and of very great concern to all Her Majesty's subjects, especially to those that inhabit or trade to the Northern parts of Her Majesty's plantations in America.

EXTRACT FROM VOL. 1, "TRADE," (PAGE 79,) POWNALL'S
MANUSCRIPTS.

A Memorial of the Hudson's Bay Company,

SHEWING:

That the French, in a time of perfect amity between the two Kingdoms, viz.: 1682, did arbitrarily invade the Company's Territorys at Port Nelson, burn the houses and seize their effects.

That in the year 1684 and 1685 they continued their depredations.

That in the year 1686 they forcibly took from the Company three factorys, viz.: Albany Fort, Rupert Fort, and Moose River Fort, which violent proceedings they continued the year 1687 and 1688; the whole damages done to the Company by the French in time of peace amount to £108,514 19s. 8d., as the Company are ready to make appear, besides interest for the same.

That in the year 1685 they supplicated His then Majesty King James the Second, to interpose on their behalf; and, by His Ambassador at the French Court, to demand reparation for the damages done to the Company, and restitution of their places unjustly taken from them by the French in time of peace: Whereupon Commissioners were appointed by His Majesty, viz.: The Earl of Sunderland, the Earl of Middleton,

and the Lord Godolphin, (now Lord High Treasurer of Great Britain) to treat with the French Commissioners, before whom the Company clearly made out their right to the whole Bay and Streights of Hudson, to the satisfaction of the English Commissioners, who on the 16th of November, 1687, reported the right of the Company; upon which King James was pleased to declare that he conceived the Company well founded in their demands, and therefore did insist upon his own right and the right of his subjects to the whole Bay and Streights of Hudson, and to the sole trade thereof; as also upon the demand of full satisfaction for the damages they had received, &c. The copy of which report, and of His Majesty's resolution thereupon, is hereunto annexed. This was transacted and declared towards the latter end of 1687, at which time, the Lord Churchill (now Duke of Marlborough) was Governor of the Company, and memorials were repeated by the said King's command at the French Court so pressingly for satisfaction and restitution, that the Company had certainly been relieved and restored to their rights, but for the war, which soon after broke out between the two Kingdoms.

That upon His late Majesty King William's accession to the throne, the Company renewed their claim to their territories, and for reparation of damages suffered from the French in times of full peace; of which His said Majesty was so sensible, that he was pleased to make the proceedings of France in that affair one of the causes and articles of his declaration of war, against the French King in *hæc verba*. But that the French King should invade our Charibee Islands, and possess himself of our Territories of the Province of New York and of Hudson's Bay in a hostile manner, seizing our forts, burning our subjects' houses, and enriching his people with the spoil of their goods and merchandize, detaining some of our subjects under hardship of imprisonment, causing others to be inhumanly killed, and driving the rest to sea in a small vessel, without food or necessaries to support them; are actions not becoming an enemy; and yet he was so far found declaring

himself so, that at that very time, he was negotiating here in England, by his ministers, a treaty of neutrality and good correspondence in America, so that the said Company did patiently wait for the end of that war, not doubting but to have justice done them when a peace was concluded.

But so it was, that the Company found their interest not comprehended in the treaty of Ryswick, which they are far from attributing to any want of care in that gracious Prince, of his Kingdom's honour and trade, and rather think their right and claim was then overweighed by matter of higher consequence depending in that juncture; for by the said treaty they found their condition much worse than it was before, by the 8th article, whereof the French were to be left in possession of such places situated in Hudson's Bay, as had been taken by them during the peace which preceded that war.

That at a meeting of Commissioners on both sides (as directed by the said treaty to adjust these differences) the Company did again set forth the undoubted right of the Crown of England to the whole Bay and Streights of Hudson, against which nothing but sophistry and cavils were offered on the French side, and the matter remained undetermined.

That the only settlement now remaining to the Company in those parts (of seven they formerly had) is Albany Fort, or Checheowan, where they are surrounded on every side by the French, viz.: by their settlement on the lakes and rivers from Canada to the northward towards Hudson Bay—as also from Port Nelson (also York Fort) to the southward. The French likewise have lately made another settlement between Port Nelson and Albany Fort, whereby the Indians are hindered from coming to trade with the English factory at the bottom of the Bay, and if they are suffered to fix and fortify in those parts, beyond all question they will deprive Her Majesty's subjects of that tract of land, which is so large a part of her American dominion and rightfully belongs to the Crown of Great Britain.

That not only Her Majesty's glory is concerned to preserve

those plantations, but it very much imports the general trade of her kingdom, since the Company, notwithstanding the losses and discouragements they have laboured under and during the war, have brought from thence between 30,000 and 40,000 skins per annum, and doubt not, if they were re-instated in their right according to their Charter, to bring the said importation to 100,000 skins per annum.

That the said country does abound with several other commodities (of which the company have not been able to begin trade, by reason of the interruptions from the French), as with whale-oil, whalebone (of which last Her Majesty's subjects now purchase from Holland and Germany, to the value of £26,000 per annum), which might be had in her own plantations, besides many other valuable commodities which in time may be discovered.

That if the French come once to be entirely possessed of Hudson's Bay, they will undoubtedly get up a whale-fishing in those parts, which will greatly tend to the increase of their navigation, and to their breed of seamen.

That there is carried thither and consumed there, nothing but of the product and manufactures of England, the Company encouraging a daily bringing the Indians to wear coarse cloth instead of skins, which in process of time will considerably advance the woollen trade at home.

That it must needs reflect on the honour of Britain, to relinquish to the French that territory, of which their violent usurpation in a time of peace, was alleged as a main Article in the first Declaration of War against that kingdom.

That if the French could pretend to any right to the said territories by the Peace of Ryswick, this right must needs be determined by their notorious infraction of the said Treaty.

The premises considered, when Her Majesty in her high wisdom shall think to give peace to those enemies, whom her victorious arms have reduced and humbled, and when Her Majesty shall judge it for her people's good to enter into a Treaty of Peace with the French King, the Company pray

that the said Prince be obliged by such treaty to renounce all right and pretensions to the Bay and Streights, to quit and surrender all forts and settlements erected by the French, or which are now in their possession, as likewise not to sail any ship or vessel within the limits of the Company's Charter, and to make restitution of the £108,514 19s. 8d. of which they robbed and despoiled the said Company in times of perfect amity between the two kingdoms.

REPORT of the English Commissioners appointed to treat with the French, concerning damages sustained by the Hudson's Bay Company, &c., 1687. Together with His Majesty's resolutions thereupon.

The English Commissioners' Report made in the Year 1687.

We your Majesty's Commissioners appointed to treat with the Ambassador and Envoy Extraordinary of His Most Christian Majesty concerning the differences that have happened, or may, to your Majesty or the French in America, have had frequent conferences with the said Ambassador and Envoy Extraordinary, in order to obtain satisfaction for the damages your Majesty's subjects have lately sustained from the French in Hudson's Bay, with restitution of the three forts which by surprise were seized on by them ; as also touching several other differences depending between the two Crowns ; and as to the business of Hudson's Bay, having already acquainted your Majesty with our proceedings therein. We do further add, as our humble opinion, that it plainly appears your Majesty and your subjects have a right to the whole Bay and Streights of Hudson, and to the sole trade thereof, so it may be fit for your Majesty to support the said Company of Hudson's Bay in the recovery and maintenance of their right, since otherwise that trade will be totally lost, and fall into the hands of the French, if they be permitted to continue in the possession of those forts, or of any fort or place within the said Bay or Streights.

His Majesty's Resolution Thereupon.

Whereupon His Majesty did declare, that having maturely considered his own right and the right of his subjects to the whole Bay and Streights of Hudson, and having been also informed of the reasons alleged on the part of the French, to justify their late proceeding in seizing three forts, which for many years past have been possessed by the English, and in committing several acts of hostility, to the very great damage of the English Company of Hudson's Bay.

His Majesty upon the whole matter did conceive the said Company well founded in their demands, and therefore did insist upon his own right and the right of his subjects to the whole Bay and Streights of Hudson, and to the sole trade thereof, as also upon the demand of full satisfaction for the damages they have received, and restitution of the three forts surprised by the French, in the bottom of the Bay.

HUDSON'S BAY.

January 10th.—Representation from the Board relating to Forts, &c., on the continent of America. *Vide* New York D. fo. 79.

January 22nd—Proposals of the Governor and Company of Hudson's Bay about their boundaries, with the French. Journal E. fo. 326. N. fo. 87.

The limits which the Hudson's Bay Company conceive to be necessary as boundaries between the French and them in case of an exchange of places, and that the Company cannot obtain the whole Streights and Bay, which of right belongs to them, viz.:

1. That the French be limited not to trade by wood-runners, or otherwise, nor build any House, Factory, or Fort, beyond the bounds of 53 degrees, or Albany river, vulgarly called Chechewan, to the northward, on the west or main coast.
2. That the French be likewise limited not to trade by wood-runners, or Fort, beyond Rupert's River, to the northward, on the east main or coast.

8. On the contrary, the English shall be obliged not to trade by 'wood-runners, or otherwise, nor building House, Factory, or Fort, beyond the aforesaid latitude of 53 degrees, or Albany river, vulgarly called Checheawan, south-east towards Canada, on any land which belongs to the Hudson's Bay Company.

4. As also the English be likewise obliged not to trade by wood-runners, or otherwise, nor build any House, Factory, or Fort, beyond Rupert's river, to the south-east, towards Canada, on any land which belongs to the Hudson's Bay Company.

5. As likewise, that neither the French or English shall at any time hereafter extend their bounds contrary to the aforesaid limitations, nor instigate the natives to make war, or join with either, in any acts of hostility to the disturbance or detriment of the trade of either nation, which the French may very reasonably comply with, for that they by such limitations will have all the country south-eastward betwixt Albany Fort and Canada to themselves, which is not only the best and most fertile part but also a much larger tract of land than can be supposed to be to the northward, and the Company deprived of that which was always their undoubted right.

And unless the Company can be secured according to these propositions they think it will be impossible for them to continue long at York Fort, (should they exchange with the French) nor will the trade answer their charge; and therefore if your Lordships cannot obtain these so reasonable propositions from the French; but that they insist to have the limits settled between Albany and York, and Albany Fort, as in the latitude of 55 degrees or thereabouts, the Company can by no means agree thereto, for they by such an agreement will be the instruments of their own ruin never to be retrieved.

By order of the Government Court,

(Signed)

WM. POTTER,
Secretary.

Confirmed by the Court }
of the said Company,
10th July, 1700. }

January 23rd.—Letter to the Governor, &c., of Hudson's Bay, relating to settlement of the boundaries with the French.

To the Governor and Deputy Governor of the Hudson Bay Company or either of them. Journal E. 327. Ans. fo. 97.

GENTLEMEN:—Upon consideration of what was this day offered to the Lords Commissioners for Trade and Plantations, by yourselves and other members of the Hudson's Bay Company, their Lordships have commanded me to acquaint you with their desire, that the Resolution of your Court may be taken and communicated to them, whether (in case the French cannot be prevailed with to consent to the settlement of the boundaries proposed by your Court of the 10th of July last), the said Court will not think fit to consent, that the limits on the east side of the Bay be extended to the latitude of $52\frac{1}{2}$ degrees, with whatever further that Court may think advisable to propose, in reference to their own affairs, for the more easy settlement of all disputes between the Company and the French in Hudson's Bay.

W. P.

Whitehall, *January 22nd*, 1709.

February 12th.—Proposals from the Governor and Company of Hudson's Bay for settling the limits with France.

To the Right Honourable the Lords Commissioners for Trade and Plantations. Journal E. 354.

The Hudson's Bay Company having lately exhibited to your Lordships their Resolution of their Court, the 10th of July last, concerning limits between them and the French in Hudson's Bay, and though the Company cannot but still insist upon their undoubted right to the whole Bay and Streights of Hudson, as has been clearly made out by them. Fo. 73. Fo. 81.

Yet in obedience to your Lordships' letter of the 22nd inst.,

and to show how desirous they are to comply therewith as much as in them lies, and is consistent with their future safety, they do further offer to your lordships the following proposals of limits between them and the French in Hudson's Bay, viz. :

1. That the French be limited not to trade by wood-runners or otherwise, nor build any House, Factory, or Fort to the northward of Albany river, vulgarly called Checheawan, on the west main or coast.

2. That the French be likewise limited not to trade by wood-runners or otherwise, nor build any House, Factory, or Fort to the northward of Hudson's river, vulgarly called Canute river, on the east main or coast.

3. On the contrary, the English, upon such an agreement, do engage not to trade by wood-runners, nor build any House, Factory, or Fort to the southward of Albany river, vulgarly called Checheawan, on the west coast, on any ground belonging to the Hudson's Bay Company.

4. As also, the English be likewise limited not to trade by wood-runners or otherwise, nor build any House, Factory, or Fort to the southward of Hudson's river, vulgarly called Canute river, on the east coast, on any ground belonging to the Hudson's Bay Company.

5. That all the islands in the said Bay and Streights of Hudson, lying to the northward of Albany river, on the west coast, and of Hudson's river, vulgarly called Canute river, on the east coast, shall be and remain to the English.

6. Likewise that all the islands in the said Bay of Hudson, lying to the southward of Albany river, on the west coast, and of Hudson's river, vulgarly called Canute river, on the east coast, shall be and remain to the French.

7. That neither the French or English shall at any time hereafter extend their bounds contrary to the aforesaid limitations, or instigate the natives to make war, or join with either in any acts of hostility, to the disturbance or detriment of the trade of either nation.

These terms the Company are willing to agree to, upon condition they may be secured from any claim that has been or may be made on them, by virtue of the 8th Article of the Treaty of Ryswick, or by any other matter or thing relating to the said Treaty. And if the French think fit to accept thereof, the Company are willing to exchange places with them, but not without settling of limits; for that the said 8th Article which saith there shall be an exchange of places, doth also say, that limits shall be likewise settled, and it would seem very unreasonable that one should be performed without the other. As to the Company's naming of rivers as boundaries, and not latitudes, the same is more certain and obvious, both to the natives as well as Europeans, and the contrary impracticable, nor can the latitude be so well laid down in that wild country, the Indians well knowing the one, but not the other.

But should the French refuse the limits now proposed by the Company, the Company think themselves not bound by this or any former concessions of the like nature, but must, as they have always done, insist upon their prior and undoubted right to the whole Bay and Streights of Hudson, which the French never yet would strictly dispute, or suffer to be examined into (as knowing the weakness of their claim), though the first step in the said Article of Ryswick directs the doing of it.

By Order of the General Court of the said Company.

(Signed) WM. POTTER,
Secretary.

January 29th, 1702.

To the Deputy Governor of the Hudson's Bay Company.

The Lords Commissioners for Trade and Plantations have commanded me to signify to you their desire that the Hudson's Bay Company would lay before them whatever they

may think fit to offer in relation to the trade and security of that place at this time.

I am,

Sir,

Your most humble servant,

W. P.

Whitehall, *January 9th*, 170 $\frac{1}{2}$.

[MEMORANDUM from the Hudson's Bay Company, representing the state of your affairs at present, and what they desire.]

To the Honourable the Lords Commissioners for Trade and Plantations.

The humble representation of the Governor and Company of Adventurers of England trading into Hudson's Bay,

SHEWETH :

That the said Company, being required by your Lordships to give in what they thought necessary in relation to their trade, and the security of their factory in Hudson's Bay, do with all submission lay before your Lordships the true state and condition thereof.

They will not trouble your Lordships with a repetition of their undoubted rights to all Hudson's Bay, and that the French never laid claim to the same, or ever sailed a ship or vessel into those parts since the creation of the world, till the year 1682 (many years after the incorporation of this Company), and then in a piratical manner, without any commission or authority from His Most Christian Majesty, who was afterwards pleased to disown the said proceeding, as the Company have and are still ready to prove.

These matters have been so fully and clearly made out by them that even the French themselves, with all their *sophistry and equivocation*, have not been able to disprove.

Therefore we shall proceed to inform your Lordships of the present melancholy prospect of their trade and settlement in Hudson's Bay, and that none of His Majesty's plantations are left in such a deplorable state as those of this Company, for by their great losses by the French, both in times of peace as well as during the late war, together with the hardships they lie under by the late Treaty of Ryswick, they may be said to be the only mourners by the peace.

They cannot but inform your lordships that the only settlement the Company have now left in Hudson's Bay (of seven they formerly possessed) is Albany Fort, vulgarly called Checheawan, in the bottom of the said Bay, where they are surrounded by the French on every side, viz., by their settlements on the lakes and rivers from Canada to the northwards, towards Hudson's Bay, as also from Port Nelson (Old York Fort) to the southward ; but besides this, the Company have, by the return of their ship this year, received certain intelligence that the French have made another settlement at a place called New Severn, 'twixt Port Nelson and Albany Fort, whereby they have hindered the Indians from coming to trade at the Company's factory, at the bottom of the Bay, so that the Company this year have not received above one-fifth part of the returns they usually had from thence, inso-much that the same doth not answer the expense of their expedition.

The Company being by these and other their misfortunes reduced to such a low and miserable condition, that, without His Majesty's favour and assistance, they are in no ways able to keep that little remainder they are yet possessed of in Hudson's Bay, but may justly fear in a short time to be deprived of all their trade in those parts, which is solely negotiated by the manufacturers of this kingdom.

Upon the whole matter, the Company humbly conceive they can be no ways safe from the insults and encroachments of the French, so long as they are suffered to remain possessed of any place in Hudson's Bay, and that in order to dis-

lodge them from thence (which the Company are no ways able to do), a force of three men-of-war, one bomb vessel, and two-hundred-and-fifty soldiers, besides the ship's company, will be necessary, whereby that vast tract of land which is of so great concern, not only to this Company in particular, but likewise to the whole nation in general, may not be utterly lost to this kingdom.

All which is humbly submitted to your lordships' great wisdom and judgment.

By the Governor and Company of Adventurers of England trading into Hudson's Bay.

W. POTTER;
Secretary.

Hudson's Bay House, *the 19th January, 170 $\frac{1}{2}$.*

January 24th.

REPRESENTATION upon the State of Defence of Hudson's Bay.
(*vide* Plan. Gen.)

LETTER to the Governor of the Hudson's Bay Company, for an account of the encroachments made by the French within the limits of the Charter.

To the Governor or Deputy Governor of the Hudson's Bay Company.

SIR,—The Lords Commissioners of Trade and Plantations, having under consideration some matters relating to the French encroachments upon Her Majesty's dominions in America, they have commanded me to desire that you will let them have as soon as possibly you can, an account of such encroachments as the French have made upon the territories and places within the limits of the said Company's Charter.

I am,
Sir,

Your most humble servant,

WM. POPPLE

Whitehall, *May 19th, 1709.*

May 23rd, 1709.

PETITION to Her Majesty, setting forth their right and title to that place, and praying restitution may be insisted upon from the French for the robberies committed by them in times of perfect amity, &c.

(Bundle A, 46.)

June 2nd, 1709.

LETTER to Mr. Secretary Boyle, with a representation containing a state of Her Majesty's right to places in the West Indies possessed or claimed by the French, as also an account of places taken on either side in those parts during the present war.

(*vide* Plan. Gen.)

December 21st, 1711.

PETITION from the Governor and Company of Adventurers of England trading into Hudson's Bay, to Her Majesty, praying that at a Treaty of Peace, the French may be obliged to renounce all right to the said Bay, &c.

To the Queen's Most Excellent Majesty.

The Petition of the Governor and Company of Adventurers of England trading into Hudson's Bay,

HUMBLY SHEWETH :

That your petitioners are far from enquiring into the great affairs of your Majesty's glorious Government, especially as what relates to war and peace, both which they know your high wisdom will so order as shall be most for the good of your whole people ; but believing the justice of your cause and the terror of your arms must soon reduce the French

King to sue for such a peace as all Europe desires and wants, your petitioners crave leave with the profoundest duty, to submit the hardships of their case to your Royal consideration.

That the French, in a time of perfect amity between the two kingdoms, viz., Anno 1682, did arbitrarily invade the Company's territories at Port Nelson, burn their houses, and seize their effects.

That in the years 1684 and 1685, they continued their depredations.

That in the year 1686, they forcibly took from the Company three Factories, viz: Albany Fort, Rupert and Moose River Fort, which violent proceedings they continued the years 1687 and 1688, the whole damages done by the French to the Company in times of peace amounting to £108,514 19s. 8d., as your petitioners are ready to make appear, besides interest for the same.

That in the year 1685, they supplicated his then Majesty King James the Second to interpose on their behalf, and by his Ambassadors at the French Court to demand reparation for the damages done to the Company, and restitution of the places unjustly taken from them by the French in times of peace: whereupon Commissioners were appointed by His Majesty, viz., the Earl of Sunderland, the Earl of Middleton, and the Lord Godolphin to treat with the French Commissioners, before whom the Company clearly made out their right to the whole Bay and Streights of Hudson,—to the satisfaction of English Commissioners, who, on the 10th November, 1687, reported the right of your petitioners, upon which King James was pleased to declare, that he conceived the Company well founded in their demands, and therefore did insist upon his own right, and the right of his subjects to the whole Bay and Streights of Hudson, and to the sole trade thereof; as also upon the demand of full satisfaction for the damages they had received, &c. The copy of which report and His Majesty's resolutions thereon, is hereunto annexed. This was translated and declared towards the latter end of 1687, at which

time the Lord Churchill, Duke of Marlborough, was Governor of the Company, and memorials were repeated by the said King's Command at the French Court so pressingly for satisfaction and restitution, that your petitioners had certainly been relieved and restored to their rights, but for the war, which soon after broke out between the two Kingdoms.

That upon the late King William's accession to the Throne, the Company renewed their claim to their territories and for reparation of damages sufficient from the French in times of full peace, of which His said Majesty was so sensible, that he was pleased to make the proceedings of France in that affair one of the causes and articles of his declaration of war against the French King in hæc Verba. "But that the French King should invade our Charibbee Islands and possess himself of our territories of the Province of New York and Hudson's Bay in an hostile manner, seizing our Forts, burning our subjects' houses, and enriching his people with the spoil of their goods and merchandizes, detaining some of our subjects under the hardships of imprisonment, causing others to be inhumanly killed, and driving the rest to sea in a small vessel, without food and necessaries to support them, are actions not even becoming an enemy, and yet he was so far from declaring himself so, that at that very time he was negotiating here in England by his Ministers, a treaty of neutrality and good correspondence in America," so that your petitioners did patiently wait the end of that war, not doubting but to have justice to them, when a peace was concluded.

But so it is, may it please your most Excellent Majesty, that the Company found their interest not comprehended in the Treaty of Ryswick, which they are far from attributing to any want of care in that gracious Prince of this Kingdom's honour and trade, and rather think their rights and claims were then overweighed by matters of higher consequence depending in that juncture; for by the said treaty they found their condition much worse than it was before. By the 8th

article whereof, the French we left in possession of such places situated in Hudson's Bay, as had been taken by them during the peace which had preceded that war.

That at a meeting of Commissioners on both sides (as directed by the said treaty, to adjust these differences) the Company did again set forth the undoubted right of the Crown of England to the whole Bay and Streights of Hudson, against which nothing but sophistry and cavils were offered on the French side, and the matter remained undetermined.

That the only settlement now remaining to the Company in those parts (of seven they formerly had) is Albany Fort, on the Checheawan, where they are surrounded by the French on every side, viz.: By their settlements on the lakes and rivers from Canada to the northward towards Hudson's Bay, as also from Port Nelson (at York Fort) to the southward; the French have likewise made another settlement between Port Nelson and Albany Fort, whereby the Indians are hindered from coming to trade with the English factory, at the bottom of the Bay, and if they are suffered to fix and fortify in those parts, beyond all question they will deprive your Majesty's subjects of that tract of land, which is so large a part of your American dominions, and rightly belongs to the Crown of Great Britain.

That not only your Majesty's glory is concerned to preserve those plantations, but it very much imports the general trade of your Kingdom. Since your petitioners, notwithstanding the losses and discouragements they have laboured under, and during the war, have brought from thence between 30,000 and 40,000 skins per annum, and doubt not if they were reinstated in their possessions, according to their charter, to bring the said importation to 100,000 skins per annum.

That the said country doth abound with several other commodities (of which your petitioners have not been able to begin a trade, by reason of the interruptions they have met with from the French) as with whale byt. whale-bone, (of which last your subjects now purchase from Holland and

Germany, to the value of about £26,000 per annum, which may be had in your own dominions) besides many other valuable commodities, which in time may be discovered.

That if the French come once to be entirely possessed of Hudson's Bay, they will undoubtedly set up whale fishing in those parts, which will greatly tend to the increase of their navigation, and to their breed of seamen.

That there is carried thither, and consumed there, nothing but of the product and manufacture of England, your petitioners encouraging and daily bringing the Indians to wear coarse cloth instead of skins, which in process of time will considerably advance the woollen trade at home.

That it needs must reflect upon the honour of Britain to relinquish to the French that territory, of which their violent usurpation in a time of peace was alleged as a main article in the first declaration of war against that Kingdom.

That if the French could pretend to any right to the said territories by the peace of Ryswick, this right must needs be determined by their notorious infraction of the said treaty.

The premises considered, when your Majesty, in your high wisdom, shall think fit to give peace to those enemies whom your victorious arms have so reduced and humbled, and when your Majesty shall judge it for your people's good to enter unto a treaty of peace with the French King; your petitioners pray that the said Prince be obliged, by such treaty, to renounce all right and pretensions to the Bay and Streights of Hudson, to quit and surrender all posts and settlements erected by the French, or which are now in their possession, as likewise not to sail any ships or vessels within the limits of the Company's charter, and to make restitution of the £108,514 19s. 8d., of which they robbed and despoiled your petitioners in times of perfect amity between the two Kingdoms.

And your petitioners, as in duty bound, shall ever pray.

MEMORANDUM from the Hudson's Bay Company, containing what they desire may be stipulated for them at the ensuing Treaty of Peace.

To the Right Honourable the Lords Commissioners of Trade and Plantations.

The Memorandum of the Governor and Company of Adventurers of England trading into Hudson's Bay.

That for avoiding all disputes and differences that may in time to come arise between the said Company and French, settled in Canada, they humbly represent and conceive it necessary :

That no wood-runners, either French or Indians, or any other person whatsoever, be permitted to travel, or seek for trade beyond the limits hereafter mentioned.

That the said limits begin from the island called Grimington's Island, or Cape Perdrix, in the latitude of $58\frac{1}{2}$ north, which they desire may be the boundary between the English and French, on the coast of Labrador, towards Rupert's Land, on the east main, and Nova Britannia on the French side, and that no French ship, barque, boat or vessel whatsoever, shall pass to the northward at Cape Perdrix, or Grimington's Island, towards or into the Streights or Bay of Hudson, on any pretence whatsoever.

That a line supposed to pass to the south-westward of the said Island of Grimington, or Cape Perdrix, to the great Lake Miskosinke at Mistoveny, dividing the same into two parts, (as in the map now delivered), and that the French nor any others employed by them, shall come to the north or north-westward of the said lake, or supposed line, by land or water, on or through any rivers, lakes, or countries, to trade, or erect any forts or settlements whatsoever, and the English, on the contrary, not to pass the said supposed line either to the southward or eastward.

That the French be likewise obliged to quit, surrender and

deliver up to the English, upon demand, York Fort (by them called Bourbon), undemolished; together with all forts, factories, settlements, and buildings whatsoever, taken from the English, or since erected, or built by the French, with all the artillery and ammunition, in the condition they are now in; together with all other places they are possessed of within the limits aforesaid, or within the Bay and Streights of Hudson.

These limits being first settled and adjusted, the Company are willing to refer their losses and damages formerly sustained by the French in times of peace, to the consideration of Commissioners to be appointed for that purpose.

By order of the Governor and Company of Adventurers of England trading into Hudson's Bay.

Hudson's Bay House, 7th February, 17 $\frac{11}{12}$.

NOTE.—The said Company are by their Charter constituted Lords Proprietors of all those lands, territories, seas, streights, bays, rivers, lakes and soundings, within the entrance of the streights, to hold the same, as of Her Majesty's manor of East Greenwich, in the County of Kent.

To the Right Honourable the Earl of Dartmouth.

MY LORD:—In obedience to Her Majesty's commands, signified to us, we have considered the enclosed Petition from the Hudson's Bay Company to Her Majesty, and are humbly of opinion, that the said Company have a good right and just title to the whole Bay and Streights of Hudson.

Since the receipt of which petition, the said Company have delivered us a memorial, relating to the settlement of boundaries between them and the French of Canada, a copy whereof is enclosed, and upon which we take leave to offer, that as it will be for the advantage of the said Company, that their boundaries be settled, it will also be necessary, that the boundaries between Her Majesty's colonies on the continent of America

and the said French of Canada be likewise agreed and settled : wherefore we humbly offer these matters may be recommended to Her Majesty's Plenipotentiaries at Utrecht.

We are,

My Lord,

Your Lordship's most obedient, and most humble servants,

WINCHELSEA.

PH. MEADOWS.

CHAS. TURNER.

GEO. BAILLIE.

ARTH. MOORE.

FRA. GWYN.

Whitehall, *February 19th, 1711*.

Right Honourable Earl of Dartmouth.

LETTER from the Earl of Dartmouth, *27th May, 1713*, referring to the Board of Petition of Hudson's Bay Company, about taking possession of the places and territories belonging to the said Company, which were late in the power of the French.

To the Right Honourable the Lords Commissioners of Trade and Plantations.

MY LORDS AND GENTLEMEN,—The Queen has commanded me to transmit to you the enclosed Petition of the Hudson's Bay Company that you may consider of it and report your opinion, what orders may properly be given upon these several particulars mentioned. In the meantime I am to acquaint you that the places and countries therein named, belonging of right to British subjects, Her Majesty did not think fit to receive any Act of Cession from the French King, and has therefore insisted only upon an order from that Court for delivering possession to such persons as should be authorised by Her Majesty to take it; *by this means* the title of the Company is acknowledged, and

they will come into the immediate enjoyment of their property without further trouble.

I am,

My Lords and Gentlemen,

Your most humble servant,

DARTMOUTH.

Whitehall, *May 27th*, 1713.

June 1st, 1713.

To the Queen's Most Excellent Majesty.

The humble petition of the Governor and Company of Adventurers of England trading in the Hudson's Bay,

SHEWETH :

That your petitioners, being informed that the Act of Cession is come over, whereby (among other matters thereby concerted), the French King obliges himself to restore to your Majesty (or to whom your Majesty shall appoint to take possession thereof) the Bay and Streights of Hudson, together with all the lands, seas, sea-coasts, rivers and places situate in the said Bay and Streights, as also all forts and edifices whatsoever, entire, and not demolished, together with guns, shot, powder and other warlike provisions (as mentioned in the 10th Article of the present Treaty of Peace), within six months after the ratification thereof, or sooner, if possible it may be done.

Your petitioners do most humbly pray your Majesty will be graciously pleased to direct the said Act of Cession may be transmitted to your petitioners, as' also your Majesty's commission to Captain James Knight and Mr. Henry Kelsey, gentleman, to authorise them, or either of them, to take possession of the premises above mentioned, and to constitute Captain James Knight to be Governor of the fortress called Port Nelson, and all other forts and edifices, lands, seas, rivers and places aforesaid, and the better to enable your petitioners *to recover the same*, they humbly pray your Majesty to

give orders that they may have a small man-of-war to depart with their ship, by the 12th day of June next ensuing, which ship may in all probability return in the month of October.

And your petitioners as in duty bound shall ever pray.

By Order of the Company.

per WM. PÖTTER,
Secretary.

LETTER from the Lord Viscount Bolingbrooke, of 13th April, 1714, referring to the Board a memorandum of the Hudson's Bay Company ; a petition on behalf of the inhabitants of Mountserratt ; and an extract of a letter from Mr. Fleetwood, consul at Naples.

To the Right Honourable the Lords Commissioners of Trade and Plantations.

MY LORDS,—I send your lordships enclosed, by the Queen's command, a memorandum of the Governor and Company of Hudson's Bay, and a petition of several persons on behalf of themselves and the inhabitants of Mountserratt. It is Her Majesty's pleasure that your lordships should consider the said memorandum and petition, as likewise the several matters which are referred to commissaries by the tenth, eleventh, and fifteenth Articles of the late Treaty of Peace with the Most Christian King, and upon the whole make your representation, to be laid before Her Majesty, for her further pleasure therein.

By the enclosed extract of a letter from Mr. Fleetwood, Her Majesty's Consul at Naples, your lordships will see that he desires to have leave to come to England ; but the Queen has thought fit, before she grants his request, to direct your lordships to inquire whether his coming away will be of prejudice to trade in those parts.

I am,

My Lords,

Your most humble servant,

BOLINGBROOKE.

Whitehall, April 13th, 1714.

April 14th.

MEMORIAL from the Hudson's Bay Company.

To the Queen's Most Excellent Majesty.

The humble memorial of the Governor and Company of Adventurers of England trading into Hudson's Bay.

That the said Company do with the utmost gratitude return your Majesty their most humble and hearty thanks for the great care your Majesty has taken for them by the Treaty of Utrecht, whereby the French are obliged to restore the whole Bay of Hudson and the Streights, being the undoubted right of the Crown of Great Britain.

And whereas by the 11th Article of the said Treaty, satisfaction is to be made to the said Company for all damages sustained from the French in times of peace, for which commissaries are to be named on both sides to adjust the same.

The said Company humbly presume to acquaint your Majesty that whenever your Majesty in your great wisdom shall think fit to name commissaries for that purpose, they are ready to make out their demand of damages sustained from the French, according to the said 11th Article.

All which they nevertheless submit to your Majesty's wisdom and goodness.

The Hudson's Bay Company,

WM. POTTER,

Secretary.

To the Right Honourable the Lord Viscount Bolingbrooke.

MY LORD,—In obedience to Her Majesty's commands, signified to us by your Lordship's letter of the 13th of the last month, we have considered the Memorial of the Governor and Company of Hudson's Bay, and the Petition relating to Mountserrat, and thereupon take leave to offer, that Her Majesty be pleased to signify to the Court of France the neces-

sity of appointing commissaries to treat of several matters pursuant to the 10th, 11th, and 15th Articles of the Treaty of Peace with France, we being informed that the French commissaries who are here, have not full powers to treat on those matters ; and as soon as we have their answer, we shall lay it before your lordship.

My Lord,

Your Lordship's most obedient and most humble servants,

GUILFORD.

R. MONCKTON.

ARTHUR MOORE.

JNO. COTTON.

JNO. SHARPE.

SAMUEL PYTTS.

THOS. VERNON.

June 18th.

To Wm. Popple, Esq.

SIR,—I, being one of the Commissioners for the Hudson's Bay Company, give me leave to take this opportunity to inform you we are sending a gentleman to take possession of our country very speedily. If the Lords have any commands touching the memorial lately presented to Her Majesty by us, relating to the damages the French did us in times of peace, this gentleman who was in Hudson's Bay at that time, can give their Lordships some information in that matter.

I am,

Your very humble servant,

JNO. PERY.

June 3rd, 1714.

August 3rd.

Abstract of the damages the Hudson's Bay Company have sustained by the French in time of peace.

A. 58.

MEMORANDUM from the Hudson's Bay Company describing limits which they desire may be fixed between them and the places appertaining to the French, &c.

To the Right Honourable the Lords Commissioners of Trade and Plantations.

The humble representation of the Governor and Company of Adventurers of England trading into Hudson's Bay,

SHEWETH :

That pursuant to the 10th article of the Treaty of Utrecht, they did, the beginning of June last, send a ship for Hudson's Bay, and therein a Governor, one Captain Knight, and his Deputy, one Mr. Kelsey, to take possession of the whole Bay and Streights of Hudson, together with all other places relating thereto, as mentioned in the said articles, they having not only her late Majesty, (of blessed memory) her commission for the same purpose, together with one from the Company, but likewise the most Christian King's order, under his hand and seal, with a power from the Canada Company, to deliver up the same according to the said treaty, which ship, at the request of the said Canada Company, is not only to bring away the French settled in Hudson's Bay, but likewise their effects, pursuant to the aforesaid treaty, they paying freight for the same, which ship may be expected the latter end of September, or beginning of October next.

They further represent to your Lordships, that, according to a memorial formerly delivered, this honourable board, relating to the limits or boundaries to be settled by commissaries 'twixt the English and French in those parts, they humbly prayed, that for avoiding all disputes and differences that may in time arise between the Company and the French settled in Canada, that no wood-runners, either French or Indians, or any other person whatsoever be permitted to travel, or seek for trade beyond the limits thereafter mentioned.

That the said limits begin from the Island called Grimington Island, or Cape Perdrix, in the latitude of $58\frac{1}{2}$ north, may be the boundary between the English and the French, on the coast of Labrador towards Rupert's Land, on the coast main and Nova Britannia on the French side.

That no French ship, barque, boat or vessel, whatsoever, shall pass to the north-westward of Cape Perdrix, or Grimington's Island, towards or into the Streights or Bay of Hudson, on any pretence whatsoever.

That a line supposed to pass to the south-westward from the said Island of Grimington, or Cape Perdrix, to the great lake Miscoinke, at Mistoveny, dividing the same into two parts, (as in the map now delivered), and from the said lake, a line to run south-westward into 49 degrees north latitude, as by the red line may more particularly appear, and that that latitude be the limit, that the French do not come to the north of it, nor the English to the south of it.

That the French nor any others employed by them shall come to the north or north-westward of the said lake, or supposed line by land or water, on or through any rivers, lakes or countries, to trade, or erect any forts or settlements whatsoever; and the English, on the contrary, not to pass the said supposed line, either to the southward or eastward.

The said Company having already delivered to your Lordships an abstract of the damages sustained by the French in times of peace, amounting to £100,543 13s. 9d., according to the direction of the 11th article of the aforesaid treaty, which they humbly entreat your Lordships to take care of, to the relief of the great hardships they have so long laboured under.

By order of the Governor and Company of Adventurers of England, trading into Hudson Bay.

WM. POTTER,
Secretary.

Hudson's Bay House, 4th August, 1714.

August 14th.

To the Right Honourable the Lords Commissioners of Trade, &c.

MY LORDS:—The Lords Justices desire to have an account forthwith laid before them of what has been done since the peace, relating to Hudson's Bay, Nova Scotia, and St. Christopher's. Some things have passed in my office, others I believe in the treasury, and a considerable deal I doubt not has been done by your Lordships; wherefore if your Lordships please to collect a perfect state of the whole, I will furnish you with what you may want from me.

I am likewise on this occasion to put your Lordships in mind of the point referred to by the Treaty of Peace with France, to the discussion of commissaries, that their Excellencies may be acquainted with the orders given to the commissaries of commerce in those matters, and their proceedings thereupon.

Your letter of the 30th July, relating to Captain Van Estegle, has been laid before the Lords Justices, and the orders their Excellencies have been pleased to give thereupon, have been sent to the Treasury and Admiralty. It is likewise thought fit that your Lordships, in your station, should advertise the governors and other officers in the plantations, of their duty in the particulars mentioned in your letter, both with respect to the trading to the French settlement, and to the illegal landing of goods from thence.

I am,

My Lords,

Your Lordship's most humble servant,

BOLINGBROKE

Whitehall, *August 12th*, 1714.

To the Viscount Bolingbroke.

MY LORD,—In obedience to their Excellencies the Lords Justices' commands, signified to us by your Lordship's letter of the 12th inst., requiring to know what has been done since the Peace relating to Hudson's Bay, Nova Scotia, and St. Christopher's, we take leave to represent :

That upon your Lordship's letter of the 22nd July, requiring us to prepare proper instructions for the British commissaries who are appointed to treat with those of France, upon the 10th, 11th, and 15th Articles of the Treaty of Peace, we wrote letters to several persons concerned in the Leeward Islands, and several parts of the continent, for what they might have to offer to such parts of the said Articles as did relate to them respectively, and have received answers from some of them. We pray your Lordships will please lay the enclosed copies thereof before their Excellencies the Lords Justices, as follows :

Copy of a memorial from the Hudson's Bay Company, describing the limits which they desire may be fixed between them and the French in those parts, as also an abstract of the damages they have sustained by the French in times of peace.

In relation to St. Christopher's, we further take leave to represent that upon several references from Her late Majesty in Council, from the Lord High Treasurer and from the Secretary of State, we prepared a representation relating to the settlement of the French part of that Island, as also a letter to the late Lord Treasurer upon the same subject, copies whereof are here enclosed, which your Lordships will please also lay before their Excellencies the Lords Justices.

Since which time we have received some other petitions from French refugees, also referred to us of the same nature as those mentioned in our above said representation, which we have not been yet able to consider so as to be able to make a report thereon.

We shall take care by the first opportunity to send direc-

tions to the governors and other officers in the Plantations, in relation to the illegal trade between the said Plantations and the said French settlements.

We are,

My Lord,

Your most obedient and humble servants,

PH. MEADOWS.

ARTHUR MOORE.

JNO. SHARPE.

SAMUEL PYTTS.

THOS. VERNON.

Whitehall, *Aug. 14th*, 1714.

APPENDIX P.

MEMORIAL from M. de Torcy, *7th January*, 1713, for Mr. Prior.

The 9th (10th) article of the plan imports, that the King shall give up to the Queen of Great Britain, Hudson's Bay &c., in the manner they are now possessed by the King and the French.

The plenipotentiaries of Great Britain insist that it shall be expressed, that France shall *restore not only what has been taken from the English*, but also *all that England has ever possessed in that quarter*. This new clause differs from the plan, and would be a source of perpetual difficulties; but to avoid them, the King has sent to his plenipotentiaries the same map of North America, as had been furnished by the plenipotentiaries of Great Britain. His Majesty has caused to be drawn upon this map, a line which describes the boundaries in such a manner as he has reason to think they easily may agree [upon] this point on both sides.

If, however, there should be any obstacle which the plenipotentiaries cannot remove, the decision must be referred to commissaries to be named for the adjustment of the boundaries of America. The same article says that the King's

subjects shall be at liberty to depart from their lands, in places ceded by his Majesty to the Crown of Great Britain, to carry with them their goods and moveables and to go wherever they please by sea or land. The plenipotentiaries of France have also reserved to them the right of disposing of their immoveable effects in the space of three years. * * *

The plenipotentiaries of Great Britain agree to one year * * * * . Under the name of places *ceded* they include Acadia and the Island of St. Christopher. Under the name of places *restored*, Hudson's Bay and Straits, and the Island of Newfoundland.

Upon Article 10 (11) the plenipotentiaries of France demand, that the English, obtaining the right to prefer their complaints of loss sustained in Hudson's Bay before the commissaries, the King's subjects should have the same right with regard to the business at Nevis and Gambia.

This mutuality, which the plenipotentiaries of Great Britain have not yet been willing to grant, seems just, the English shall have the same liberty to represent their losses at Montserrat, and to solicit a reparation, which shall be granted to them.

EXTRACT.

Marquis de Torcy to Lord Bolingbroke, December 29th, 1712.

In the name of God, sir, order your plenipotentiaries to be less excellent grammarians. Ours, who also understand the force of Latin expressions, are out of patience when they see difficulties, which have been long adjusted, started again, and the difference between *cession* and *restitution*, and the meaning of those terms. In truth, sir, such questions ought not to be the amusement of honourable men. They are at best excusable only to those to whom we may apply *amantium iræ*. Finish these disputes, which, if they continue longer, will only profit our enemies.

EXTRACT.

Lord Bolingbroke to Marquis de Torcy, 7th January, O. S., 1713.

There are certain things which derive their consequence purely from being disputed; the difference between the expressions *cedendis* and *restituendis*, between *assumpsit* and *usurpavit* or *arrogavit* is not very essential; the mind was, however, not a little heated in the dispute, and it required some trouble to convince certain people that the matter was not worthy of attention.

MEMORIAL concerted with Marquis de Torcy, 19th January, 1713, and forwarded to Lord Bolingbroke, by the Duke of Shrewsbury.

The inhabitants of Hudson's Bay, subjects of the Queen of Great Britain, who have been dispossessed of their lands by France, in time of peace, shall be, entirely and immediately after the ratification of the treaty, restored to the possession of their said lands; and such proprietors shall also have a just and reasonable satisfaction for the losses they have suffered, with respect to their goods, moveables and effects; which losses shall be settled by the judgment of commissaries, to be named for this purpose, and sworn to do justice to the parties interested.

As to the limits of Hudson's Bay, and what the ministry here seem to apprehend, at least in virtue of the general expression, *tout ce que l'Angleterre a jamais possédé de ce côté là*, (which they assert to be wholly new, and which I think is really so, since our plenipotentiaries make no mention of it,) may give us occasion to encroach at any time upon their dominions in Canada, I have answered, that since, according to the *carte* which came from our plenipotentiaries, marked with the extent of what was thought our dominion, and returned by the French with what they judged the extent of

theirs, there was no very great difference, and that the parties who determine that difference, must be guided by the same *carte*. I thought the article would admit no dispute. In case it be either determined immediately by the plenipotentiaries or referred to commissioners, I take leave to add to your Lordship that these limitations are no otherwise advantageous or prejudicial to Great Britain than as we are better or worse with the native Indians, and that the whole is a matter rather of industry than dominion. If there be any real difference between *restitution* and *cession*, *quæritur*? Yet since, in either case, the right of the inhabitant as to transferring his goods and effects, or disposing of his person and family is always provided for in treaty, I leave it to your Lordship's better judgment if a fixed time in either case, (suppose eighteen months or two years) does not put the subject, who is to have the benefit which *restitution* or *cession* grants him, upon a more equal foot, &c.—Prior to Bolingbroke, 8th January, n. s., 1713, Hard. St. P. Vol. 2, p. 500.

APPENDIX Q.

LICENSE OF EXCLUSIVE TRADE TO THE HUDSON'S BAY COMPANY.

GEORGE R.

(L. S.)

GEORGE the Fourth, by the Grace of God of the United Kingdom of Great Britain and Ireland King, Defender of the Faith.

To all to whom these presents shall come, greeting :

WHEREAS an Act passed in the second year of our reign, intituled, " An Act for regulating the Fur Trade, and for establishing a Criminal and Civil Jurisdiction within certain parts of North America;" wherein it is amongst other things enacted, that from and after the passing of the said Act, it

should be lawful for us, our heirs or successors, to make Grants or give our Royal License, under the hand and seal of one of our Principal Secretaries of State, to any body corporate or company, or person or persons, of or for the exclusive privilege of trading with the Indians in all such parts of North America as should be specified in any such Grants or Licenses respectively, not being part of the lands or territories heretofore granted to the Governor and Company of Adventurers of England, trading to Hudson's Bay, and not being part of any of our provinces in North America, or of any lands or territories belonging to the United States of America, and that all such Grants and Licenses should be good, valid, and effectual, for the purpose of securing to all such bodies corporate, or companies, or persons, the sole and exclusive privilege of trading with the Indians, in all such parts of North America (except as thereafter excepted) as should be specified in such Grants or Licenses, any thing contained in any Act or Acts of Parliament, or any law to the contrary notwithstanding ; and it was in the said Act further enacted, that no such Grant or License made or given by us, our heirs or successors, of any such exclusive privileges of trading with the Indians in such parts of North America as aforesaid should be made or given for any longer period than 21 years, and that no rent should be required or demanded for or in respect of any such Grant or License, or any privileges given thereby, under the provisions of the said Act, for the first period of 21 years ; and it was further enacted, that from and after the passing of the said Act, the Governor and Company of Adventurers of England trading to Hudson's Bay, and every body corporate and company and person, to whom every such Grant or License should be made or given as aforesaid, should respectively keep accurate registers of all persons in their employ, in any parts of North America, and should once in each year return to our Principal Secretaries of State accurate duplicates of such registers, and should also enter into such security as should be required by us for the

due execution of all criminal processes, and of any civil process in any suit where the matter in dispute shall exceed £200, and as well within the territories included in any such Grant as within those granted by Charter to the Governor and Company of Adventurers of England trading to Hudson's Bay, and for the producing and delivering into safe custody for the purpose of trial, all persons in their employ, or acting under their authority, who should be charged with any criminal offence, and also for the due and faithful observance of all such rules, regulations and stipulations as should be contained in any such Grant or License, either for gradually diminishing and ultimately preventing the sale or distribution of spirituous liquors to the Indians, or for promoting their moral and religious improvement; or for any other object which we might deem necessary for the remedy or prevention of any other evils which have been hitherto found to exist: And whereas it was also in the said Act recited, that by a Convention entered into between his late Majesty and the United States of America, it was stipulated and agreed, that every country on the north-west coast of America to the westward of the Stony Mountains should be free and open to the citizens and subjects of the two powers for the term of ten years from the date of the signature of that Convention; and it was therefore enacted, that nothing in the said Act contained should be deemed or construed to authorise any body corporate, company, or person, to whom his Majesty might, under the provisions of the said Act, make or grant, or give a license of exclusive trade with the Indians in such parts of North America as aforesaid, to claim or exercise any such exclusive trade within the limits specified in the said article, to the prejudice or exclusion of any citizens of the said United States of America who might be engaged in the said trade: Provided always, that no British subject should trade with the Indians within such limits without such Grant or License as was by the said Act required.

And whereas the said Governor and Company of Adven-

turers of England trading into Hudson's Bay, and certain Associations of persons trading under the name of the "North-west Company of Montreal," have respectively extended the fur trade over many parts of North America which had not been before explored : And whereas the competition in the said trade has been found for some years past to be productive of great inconvenience and loss, not only to the said Company and Associations, but to the said trade in general, and also of great injury to the native Indians, and of other persons our subjects : And whereas the said Governor and Company of Adventurers of England trading into Hudson's Bay, and William M'Gillivray, of Montreal, in the Province of Lower Canada, esquire, Simon M'Gillivray, of Suffolk Lane, in the City of London, merchant, and Edward Ellice, of Spring Gardens, in the County of Middlesex, esquire, have represented to us, that they have entered into an agreement, on the 26th day of March last, for putting an end to the said competition, and carrying on the said trade for 21 years, commencing with the outfit of 1821, and ending with the returns of 1841, to be carried on in the name of the said Governor and Company exclusively :

And whereas the said Governor and Company, and William M'Gillivray, Simon M'Gillivray and Edward Ellice, have humbly besought us to make a Grant, and give our Royal License to them jointly, of and for the exclusive privilege of trading with the Indians in North America, under the restrictions and upon the terms and conditions specified in the said recited Act : Now KNOW YE, That we, being desirous of encouraging the said trade and remedying the evils which have arisen from the competition which has heretofore existed therein, do grant and give our Royal License, under the hand and seal of one of our Principal Secretaries of State, to the said Governor and Company, and William M'Gillivray, Simon M'Gillivray and Edward Ellice, for the exclusive privilege of trading with the Indians in all such parts of North America to the northward and the westward of the lands and territo-

ries belonging to the United States of America as shall not form part of any of our provinces in North America, or of any lands or territories belonging to the said United States of America, or to any European government, state or power ; and we do by these presents give, grant and secure to the said Governor and Company, William M'Gillivray, Simon M'Gillivray and Edward Ellice jointly, the sole and exclusive privilege, for the full period of 21 years from the date of this our Grant, of trading with the Indians in all such parts of North America as aforesaid (except as thereafter excepted) ; and we do hereby declare that no rent shall be required or demanded for or in respect of this our Grant and License, or any privileges given thereby, for the said period of 21 years, but that the said Governor and Company, and the said William M'Gillivray, Simon M'Gillivray and Edward Ellice shall, during the period of this our Grant and License, keep accurate registers of all persons in their employ in any parts of North America, and shall once in each year return to our Secretary of State accurate duplicates of such registers, and shall also enter into and give security to us, our heirs and successors, in the penal sum of £5,000 for ensuring, as far as in them may lie, the due execution of all criminal processes, and of any civil process in any suit where the matter in dispute shall exceed £200, by the officers and persons legally empowered to execute such processes within all the territories included in this our Grant, and for the producing and delivering into safe custody, for purposes of trial, any persons in their employ, or acting under their authority within the said territories, who may be charged with any criminal offence.

And we do also hereby require, that the said Governor and Company, and William M'Gillivray, Simon M'Gillivray and Edward Ellice shall, as soon as the same can be conveniently done, make and submit for our consideration and approval such rules and regulations for the management and carrying on the said fur trade with the Indians, and the conduct of

the persons employed by them therein, as may appear to us to be effectual for gradually diminishing or ultimately preventing the sale or distribution of spirituous liquors to the Indians, and for promoting their moral and religious improvement.

And we do hereby declare, that nothing in this our Grant contained shall be deemed or construed to authorise the said Governor and Company, or William M'Gillivray, Simon M'Gillivray and Edward Ellice, or any person in their employ, to claim or exercise any trade with the Indians on the north-west coast of America to the westward of the Stony Mountains, to the prejudice or exclusion of any citizens of the United States of America who may be engaged in the said trade: Provided always, that no British subjects other than and except the said Governor and Company, and the said William M'Gillivray, Simon M'Gillivray and Edward Ellice, and the persons authorised to carry on exclusive trade by them on Grant, shall trade with the Indians within such limits during the period of this our Grant.

Given at our Court at Carlton House the 5th day of December, 1821, in the second year of our reign.

By His Majesty's command,

(L. S.)

BATHURST.

APPENDIX R.

MEMORANDUM enclosed in Chief Justice *Draper's* Letter of May 6th, to the Secretary of State.

It is not proposed at present to discuss the validity of the Charter of the Hudson's Bay Company. A careful perusal of it will suggest many doubts whether it be not altogether void. But assuming that it may be sustainable for every or for any of the purposes for which it was intended, and for the moment conceding that the indefinite description of the

territory purporting to be granted, does not vitiate the grant, there is a question as to the limits of that territory in which the province of Canada is deeply interested.

The parts of the Charter bearing on this question are as follows :

1. "All the lands and territories upon the countries, coasts and confines of the seas, bays, lakes, rivers, creeks, and sounds aforesaid" (stated in a preceding part to be those which lie within the entrance of the straits, commonly called Hudson's Straits, in whatsoever latitude, such bays, &c., should be), "that are not already actually possessed by or granted to any of our subjects, or possessed by the subjects of any other Christian prince or State, with the fishing of all sorts of fish, whales, sturgeons, and all other royal fishes in the seas, bays, inlets and rivers within the premises ; and the fish therein taken, together with the royalty of the sea upon the coasts within the limits aforesaid, and all mines royal, as well discovered as not discovered, of gold, silver, gems and precious stones, to be found or discovered within the territories, limits and places aforesaid ; and that the said land be from henceforth reckoned and reputed as one of our plantations or colonies in America, called Rupert's Land : And, further, we do by these presents, for us, our heirs and successors, make, create and constitute the said Governor and Company for the time being, and their successors, the true and absolute lords and proprietors of the same territory, limits and places aforesaid, and of all other the premises hereby granted as aforesaid, with their and every of their rights, members, jurisdictions, prerogatives, royalties and appurtenances whatsoever, to them the said Governor and Company, and their successors for ever, to be holden of us, our heirs and successors, as of our manor of East Greenwich, in our county of Kent, in free and common soccage."

And, 2. "And furthermore, we do grant unto the said Governor and Company and their successors, that they and their *successors*, and their factors, servants and agents, for them

and on their behalf, and not otherwise, shall for ever hereafter have, use and enjoy, not only the whole, entire, and only trade and traffic, and the whole, entire and only liberty, use and privilege of trading and trafficking to and from the territory, limits and places aforesaid, but also the whole and entire trade and traffic to and from all havens, bays, creeks, rivers, bays and seas into which they shall find entrance or passage, by water or land, out of the territories, limits or places aforesaid, and to and with all the natives and people inhabiting within the territories, limits and places aforesaid, and to and with all other nations inhabiting any of the coast adjacent to the said territories, limits and places which are not granted to any of our subjects."

Prior to this Charter, there was little or nothing done within Hudson's Bay in the way of taking any actual possession of the territory granted. The bay had been discovered, several ships from time to time had entered it, and probably some interchange of commodities with the Indians had taken place while the vessels remained within the Straits; but nothing whatever was known of the interior. Charles the Second claimed, for it was no more than a claim, all the territory which the discovery of the Straits and Bay could confer on the British Crown. The French Crown in like manner had claimed, by reason of their actual settlement of Canada, and of their progressive discoveries and trade, not only all the western territory, including that now in dispute, but even the Bay of the North, and thence to the Pole; but neither French nor English had, in 1670, actually penetrated, so far as appears, within many hundred miles of the Red River.

The settlements made by the Hudson's Bay Company were at first confined to those on the shores of James Bay, and at the Churchill and Hayes Rivers. Henley House, which is about 150 miles up the Albany River, was not erected before the year 1740. The Company afterwards erected Fort Nelson, which is laid down on the maps at about 200 or 230 miles from the mouth of Churchill River, and the fort at Split Lake,

which is represented as about 140 miles from the mouth of the Nelson River. It is believed that these two last-named forts are of comparatively modern erection, but that, at all events, for more than a century after the date of the Charter, these, together with the forts on or near the shores of the bays, were the only settled posts of the Hudson's Bay Company.

This throws some light upon the view, which the Company practically adopted, of the extent of their territories.

In many written documents they treat Hudson's Straits and Bay as the governing and principal matter, in reference to or for the purpose of securing which, the grant of territory was made to them.

In a petition addressed by the Hudson's Bay Company to Charles the Second, in 1682, they say that His Majesty was graciously pleased to incorporate them, and to grant to them for ever all the said Bay, and the Straits leading thereunto, called Hudson's Straits, with all the lands and territories, rivers and islands in and about the said Bay, and the sole trade and commerce there; and, referring to a letter of Monsieur de la Barre, the Governor of Canada, threatening to drive them out, they observe, they doubt not but that by the King's Royal authority and protection, they will be enabled to defend his undoubted right and their own within the Bay, "wherein never any nation but the subjects of your Imperial Crown has made discoveries or had any commerce."

In a letter dated January 25, 1696-7, they urge, "whenever there be a treaty of peace between the Crowns of England and France, that the French may not travel or drive any trade beyond the midway betwixt Canada and Albany Fort, which we reckon to be within the bounds of our Charter."

In 1698, in a letter written by their deputy-governor to the Lords Commissioners of Trade, they repeat the same desire.

In a memorial, dated in June, 1699, they represent the Charter as constituting them the true and absolute proprietors of Hudson's Bay, and of all the territories, limits and

places thereto belonging. They further set forth the attacks made in 1682 and 1686 by the French from Canada, and their applications for redress, and the declaration made by James the Second that he, upon the whole matter, did conceive the said Company well founded in their demands, and therefore did insist upon his own right and the right of his subjects to the whole Bay and Straits of Hudson, and to the sole trade thereof; and they pray the then King, William the Third, to insist upon the inherent right of the Crown of England and the property of his subjects not to be alienated, that so considerable a trade might not be lost, and the Hudson's Bay Company "be left the only mourners" in the peace of Ryswick.

At this time all their forts but one (Albany Fort) had been taken by the French; some of them, indeed, while the two Crowns were at peace; an act of aggression specially referred to by His Majesty in the declaration of war in 1689.

In January, 1700, being called upon by the Lords of Trade and Plantations, they offered proposals for limits between them and the French in Hudson's Bay, insisting at the same time upon their undoubted right "to the whole Bay and Streights of Hudson." The proposed limits were, to confine the French from trading or building any house, factory or fort to the northward of Albany River, situate in about 53° of north latitude on the west main coast, or to the northward of Rupert's River, on the east main or coast of the Bay, binding themselves not to trade or build any house, factory or fort to the southward of these two rivers "on any ground belonging to the Hudson's Bay Company." They urged that these limits should be settled; stating, that if the French refused, they must insist upon their prior and undoubted right to the whole Bay and Straits of Hudson, which, they observed, the French never yet would strictly dispute or suffer to be examined into, though the first step of the eighth article of the Treaty of Ryswick directs the doing of it. These limits would have given the French access to the Bay by the Moose River.

The French Ambassador did, however, in March 1698-9, set forth the claims of his sovereign in a long answer to the English memorial, among other things observing that the different authors who have written about Canada or New France, gave it no limits northwards, and that it appeared by all the grants or letters of corporation made at several times by the Kings of France to the companies settled in New France, and particularly in 1628, that all the Bay of the North is comprehended in the limits mentioned by the said grants.*

He also further suggested, that if the English had had any knowledge of the Bay, or any claim thereto, they would not have failed to have insisted on it, and expressly to mention it in the treaty of 1632 (that of St. Germain-en-Laye), when they restored to the French, New France. Admitting that the French neither then nor for a long time afterwards had any forts on the coasts of the Bay, he explains it by saying, that being masters of the inland country, the savages, with whom they had a continual trade, brought their furs over lakes and rivers.

In April, 1714, the Hudson's Bay Company thank the Queen "for the great care your Majesty has taken for them by the Treaty of Utrecht, whereby the French are obliged to restore the whole Bay and Streights of Hudson; the undoubted right of the Crown of Great Britain."

In August, 1714, in reference to the same treaty, the Hudson's Bay Company proposed that the limits between the English and French on the coast of Labrador, should commence from the island called Grimmington's Island or Cape Perdrix, in the latitude of $53\frac{1}{2}^{\circ}$ N., which they desire may be the boundary between the French and English on the coast of Labrador; and that a line be drawn south-westerly,

* L'Escarbot describes Canada at the period of the appointment of De la Roche, in 1598, thus: "Ainsi notre Nouvelle France a pour limites du côté d'ouest les terres jusqu'à la Mer Pacifique au delà du Tropique du Cancer, au midi les fles de la Mer Atlantique du côté de Cuba et l'île Espagnole, au levant la Mer du Nord qui baigne la Nouvelle France; et au septentrion cette terre qui est dite inconnue vers la Mer Glacée jusqu'à la Pole Arctique."

to pass through the centre of Lake Mistassinhie ; and from that lake a line to run south-westward into 49° north latitude ; and that such latitude be the limit, that the French do not come to the north nor the English to the south of it.

In another paper of about the same period, they give the following account of the motives which induced the formation of the Company : "It was, therefore, after the happy restoration of King Charles II. that trade and commerce began to revive, and in particular that some noblemen and other public-spirited Englishmen, not unmindful of the discovery and right of the Crown to those parts in America, designed at their own charge to adventure the establishing of a regular and constant trade to Hudson's Bay, and to settle forts and factories there, whereby to invite the Indian nations (who lived like savages many hundred leagues up in the country) down to their factories."

In August, 1719, the Hudson's Bay Company acknowledges the surrender by the French of the Straits and Bay, in such manner that they had nothing to object or desire further on that head. But they urged the settlement of the limits between the English and French territories without delay, since the French subsequently to the conclusion of the peace (in 1715) made a settlement at the head of Albany River, upon which the Company's principal factory was settled, whereby they interrupted the Indian trade from coming to the Company's factories. It was therefore proposed and desired, "that a boundary or dividend line may be drawn so as to exclude the French from coming anywhere to the northward of the latitude of 49°, except on the coast of Labrador ; unless this be done, the Company's factories at the bottom of Hudson's Bay cannot be secure, or their trade preserved."

In all the foregoing documents it will be observed, that whether upon the peace of Ryswick, when English affairs looked gloomy, and those of France were in the ascendant, or after the Treaty of Utrecht, when the power of France was broken, the Hudson's Bay Company sought to have the boun-

dary between the territories they claimed and those forming part of Canada, settled by some defined and positive line which was to be the result of negotiation, not then pretending that there was anything in their Charter which gave them a rule by which they could insist that the extent of their territories to the southward should be ascertained.

Even in October, 1750, they entertained the same views, while at that time they were pushing their pretensions, both to the northward and westward to the utmost limits. They state that the limits of the lands and countries lying round the Bay, comprised, as they conceived, within their grant, were as follow : "All the lands lying on the east side or coast of the said Bay, eastward to the Atlantic Ocean and Davis's Straits, and the line hereafter mentioned as the east and south-eastward boundaries of the said Company's territories. And towards the north, all the lands that lie on the north end or on the north side, or coast, of the said Bay, and extending from the Bay northwards to the utmost limits of the lands there towards the North Pole ; but where or how these lands terminate is at present unknown. And towards the west, all the lands that lie on the west side or coast of the said Bay, and extending from the Bay westward to the utmost limits of those lands, but where or how those lands terminate to the westward is also unknown, though probably it will be found they terminate on the Great South Sea. And towards the south, all the lands that lie on the south end ; or south side of the coast of the said Bay, the extent of which lands to the south to be limited and divided from the places appertaining to the French in those parts, by a line," &c., describing the line from Cape Perdrix to the 49th parallel, and along that parallel westward, as in their proposals of August, 1719, excepting that they state the starting point to be in latitude $59\frac{1}{2}^{\circ}$ N. They add, with regard to this boundary, that, "to avoid as much as possible any just grounds for differing with the French in agreeing on those boundaries which lie nearest their settlements, it is laid down so as to leave the French in

possession of as much or more land than they can make any just pretensions to ; and at the same time leaves your memorialists but a very small district of land from the south end of the said Bay necessary for a frontier." It is worthy of remark, that this line would have given to France the southerly portion of the Lake of the Woods, Rainy River and Rainy Lake, which are now claimed as within the Company's territories.

The foregoing extracts are deemed sufficient to establish what the Company considered their territorial rights in reference to their connexion with and proximity to Hudson's Bay itself, where they had planted their factories and desired to attract the Indian trade. They certainly show that neither after the treaty of Ryswick, nor that of Utrecht, when they stated the boundaries, they were either willing to submit to, or were desirous of obtaining ; nor yet in 1750, when they set forth what they thought themselves entitled to claim under their Charter, did they ever think of asserting a right to all the countries the waters of which flow into Hudson's Bay. Their claims to lands lying both northward and westward of the Bay are entirely at variance with any such idea. Sir J. Pelly, before a Committee of the House of Commons, in March, 1837, seems to have adhered to the views expressed in 1750, when he said, " the power of the Company extends all the way from the boundaries of Upper and Lower Canada away to the North Pole, as far as the land goes, and from the Labrador coast all the way to the Pacific Ocean," though he afterwards explains that the Company claimed in fee-simple all the lands the waters from which ran into Hudson's Bay.

It is submitted, that if this latter claim were well founded, the further grant in the Charter of exclusive trade beyond the limits of the territories granted in fee-simple, would give colour to the assertion of the " power" of the Company extending to the Pacific ; assuming that the word " power" was used to designate the exclusive right of trade, and not the ownership of the territory. For if the Charter gives the fee-

simple of the lands to the Rocky Mountains, the Pacific is a "Sea," and Frazer's and McKenzie's are "rivers," into which "entry or passage by water or land out of the territories" actually granted may be found; though in such case the application for a license for the exclusive trade would, if the Charter be in this respect valid, have been unnecessary.

The French Government, it appears, would not agree to the proposal which would have limited them to the 49th parallel. Colonel Bladen, one of the British Commissioners under the Treaty of Utrecht, wrote from Paris in 1519 in reference thereto, "I already see some difficulty in the execution of this affair, there being at least the difference of two degrees between the best French maps and that which the Company delivered us." No settlement of the boundary could be arrived at.

If the later claim of territorial limits had been advanced during this negotiation, there can be no doubt it would have been resisted even more strenuously than the effort to make the 49th parallel the boundary was, not merely by contending that the territory so claimed formed part of Canada, and had been treated as such by the French long before 1670, but also that the French king had exercised an act of disposition of them, of the same nature as that under which the Hudson's Bay Company claim, by making them the subject of a charter to a company under the *Sieur de Caen's* name, and after the dissolution of that Company had, in 1627, organized a new company, to which he conceded the entire country called Canada. And this was before the Treaty of *St. Germain-en-Laye*, by which the English restored Canada to the French. In 1663 this Company surrendered their Charter, and the King, by an edict of March in that year, established a council for the administration of affairs in the colony, and nominated a governor; and, about 1665, *Monsieur Talon*, the intendant of Canada, despatched parties to penetrate into and explore the country to the west and north-west, and in 1671 he reported from *Quebec* that the "*Sieur du Lusson* is returned,

after having advanced as far as 500 leagues from here, and planted the cross, and set up the king's arms in presence of 17 Indian nations assembled on the occasion from all parts, all of whom voluntarily submitted themselves to the dominion of His Majesty, whom alone they regard as their sovereign protector."

The French kept continually advancing forts and trading posts in the country, which they claimed to be part of Canada; not merely up the Saguenay River towards James' Bay, but towards and into the territory now in question; in parts and places to which the Hudson's Bay Company had not penetrated when Canada was ceded to Great Britain in 1763, nor for many years afterwards.* They had posts at Lake St. Anne, called by the older geographers Alenimipigon; at the Lake of the Woods; Lake Winnipeg; and two, it is believed, on the Saskatchewan, which are referred to by Sir Alexander M'Kenzie in his account of his discoveries.

Enough, it is hoped, has been stated to show that the limits of the Hudson's Bay Company's territory are as open to question now as they have ever been, and that when called upon to define them in the last century, they did not advance the claim now set up by them; and that even when they were defining the boundary which they desired to obtain under the Treaty of Utrecht, at a period most favourable for them, they designated one inconsistent with their present pretensions, and which, if it had been accepted by France, would have left no trifling portion of the territory as part of the province of Canada.

So far as has been ascertained, the claim to all the country the waters of which ran into Hudson's Bay, was not advanced until the time that the Company took the opinions of

* In the evidence given by the Honourable Wm. M'Gillivray, on one of the North-west trials at York (now Toronto), in 1818, he stated that there were no Hudson's Bay traders established in the Indian country about Lake Winnipeg or the Red River for eight or nine years after he had been used (as a partner in the North-west Company) to trade in that country.

the late Sir Samuel Romilly, Messrs. Cruise, Holroyd, Scarlett and Bell. Without presuming in the slightest degree to question the high authority of the eminent men above-named, it may be observed that Sir Arthur Pigott, Serjeant Spankie, Sir Vicary Gibbs, Mr. Bearcroft, and Mr. (now Lord) Brougham took a widely different view of the legal validity of the Charter, as well as regards the indefinite nature of the territorial grant, as in other important particulars.

Of the very serious bearing of this question on the interests of Canada, there can be no doubt. By the Act of 1774, the Province of Quebec is to "extend westward to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the merchants' adventurers of England trading to Hudson's Bay."

And in the division of the Provinces under the statute of 1791, the line was declared to run due north from Lake Temiscamary "to the boundary line of Hudson's Bay," and the Upper Province is declared to consist "of or include all that part of Canada lying to the westward and southward of the said line."

The union of the Provinces has given to Canada the boundaries which the two separate Provinces of Upper and Lower Canada had; the northern boundary being the territory granted to the Hudson's Bay Company.

It is now becoming of infinite importance to the Province of Canada, to know accurately where that boundary is. Plans for internal communication connected with schemes for agricultural settlements, and for opening new fields for commercial enterprise, are all, more or less, dependent upon or affected by this question, and it is to Her Majesty's Government alone that the people of Canada can look for a solution of it. The rights of the Hudson's Bay Company, whatever they may be, are derived from the Crown; the Province of Canada has its boundaries assigned by the same authority; and now that it appears to be indispensable that those boundaries should be settled, and the true limits of Canada ascertained, it is to Her

Majesty's Government that the Province appeals to take such steps as in its wisdom are deemed fitting or necessary to have his important question set at rest.

PAPER delivered in by Mr: Chief Justice *Draper*, 28th May, 1857, relative to CANADIAN BOUNDARIES.

Boundaries.

On the 25th January, 1696-7, not long before the Treaty of Ryswick (which was signed on the 20th September, 1697), the Hudson's Bay Company expressed their "desire that whenever there should be a treaty of peace between the Crowns of England and France, that the French may not travel or drive any trade beyond the midway betwixt Canada and Albany Fort, which we reckon to be within the bounds of our charter."

The 8th Article of the Treaty of Ryswick shows that the French, at that time, set up a claim of right to Hudson's Bay, though that claim was abandoned at the peace of Utrecht, and was never set up afterwards.

In 1687, James the Second declared to the French Commissioners, MM. Barillon and Bonrepos, that having maturely considered his own right, and the right of his subjects, to the whole Bay and Straits of Hudson, and having been also informed of the reasons alleged on the part of the French to justify their late proceedings in seizing these forts (Fort Nelson and Fort Charles), which for many years past have been possessed by the English, and in committing several other acts of hostility, to the very great damage of the English Company of Hudson's Bay, His Majesty, upon the whole matter, did consider the said Company well founded in their demands, and, therefore, did insist upon his own right and the right of his subjects to the whole Bay and Straits of Hudson, and to the sole trade thereof.

“ The grants of the French King signify nothing to another prince his right, and they may name what they will in their grants, places, known or unknown, but nobody is so weak as to think that anything passeth by those grants but what the King is rightfully and truly possessed of or entitled to, for *nemo dat quod non habet* is a maxim understood of all; but whereas the French would have no bounds to Canada to the northward, nor, indeed, to any parts of their dominions in the world if they could.”—Extract from the Reply of the Hudson's Bay Company to the French Answer left with the English Commissioners, 5th June, 1699, under Treaty of Ryswick.

In 1687 there were discussions between the English and French respecting the right to the Bay and Straits, in which it was, among other things, submitted on the part of the Hudson's Bay Company as follows: “ It shall not be the fault of the Company of Hudson's Bay, if their agents and those of the Company of Canada do not keep within their respective bounds, the one pretending only to the trade of the Bay and Straits above-mentioned, whilst the other keeps to that of Canada; and that the forts, habitations, factories and establishments of the English Company be restored, and their limits made good, as the first discoverers, possessors and traders thither.”

The Company having already waived the establishment of a right to Hudson's Bay and Straits “ from the mere grant and concessions of the King, which, indeed, cannot operate to the prejudice of others that have the right of discovery and continued possession on their side, it is again averred that His Majesty's subjects only are possessed of such a right to the coasts, bays, and straits of Hudson.”

“ The Hudson's Bay Company having made out His Majesty's right and title to all the bay within Hudson's Straits, with the rivers, lakes and creeks therein, and the lands and territories thereto adjoining, in which is comprehended Port Nelson as part of the whole.”—10 July, 1700. The Hudson's Bay Company proposed the following limits between

themselves and the French, in case of an exchange of places, and that they cannot obtain the whole of the Straits and Bay which of right belongs to them.

1. That the French be limited not to trade or build any factory, &c., beyond the bounds of 53° N. or Albany River, to the northward on the west or main coast, and beyond Rupert's River, to the northward on the east main coast.

2. The English shall be obliged not to trade nor build any factory, &c., beyond the aforesaid latitude of 53° or Albany River, or beyond Rupert's River, south-east towards Canada, on any land which belongs to the Hudson's Bay Company.

3. As likewise that neither the French nor English shall at any time hereafter extend their bounds contrary to the aforesaid limitations . . . which the French may very reasonably comply with, for that they by such limitations will have all the country south-eastward betwixt Albany Fort and Canada, to themselves, which is not only the best and most fertile part, but also a much larger tract of land than can be supposed to lie to the northward, and the Company deprived of that which was always their undoubted right.

By this document it appears the French were insisting on having the limits settled between York and Albany Fort, as in the latitude of 53° or thereabouts.

22 January, 1701-2.—The Lords of Trade and Plantations asked the Company to say "whether, in case the French cannot be prevailed with to consent to the settlement proposed on the 10th July preceding by the Company, they will not consent that the limits on the east side of the Bay be the latitude of 52½°." This proposal would have given the East Main River and Rupert's River to Canada.

On the 29th January, the Hudson's Bay Company alter their proposals, offering the boundary on the east main or coast, to be Hudson's River, vulgarly called Canute or Canuse River (which I take to be the river now marked on the maps as the East Main River); but, they add, should the French refuse the limits now proposed by the Company, the Com-

pany think themselves not bound by this or any former concessions of the like nature, but must (as they have always done) insist upon their prior and undoubted right to the whole Bay and Straits of Hudson, which the French never yet would strictly dispute, or suffer to be examined into (as knowing the weakness of their claim), though the first step in the 8th Article of the Treaty of Ryswick directs the doing of it. If either proposal had been accepted, the French would have had access to James' Bay. The first propositions left them the Moose River ; the second appears to have given up Rupert's River.

In February, 1711-12, prior to the Treaty of Utrecht, the Hudson's Bay Company proposed that the limits between them and the French in Canada should begin "at Grimington's Island, or Cape Perdrix, in the latitude of $58\frac{1}{2}^{\circ}$ north, which they desire may be the boundary between the English and French, on the coast of Labrador ; towards Rupert's Land on the East Main, and Nova Brittannica on the French River." That a line be drawn from Cape Perdrix to the Great Lake Mistassing, dividing the same into two parts, beyond which line the French were not to pass to the north, nor the English to the south.

In August, 1717, they renewed their application for the settlement of the limits, adding to their former proposition, that from the Lake Mistassing a line should run south-westward into 49° north latitude, and that such latitude be the limit, and that the French do not come to the north, or the English to the south of this boundary.

In August, 1719, in a memorial, they say, that "the surrender of the Straits and Bay aforesaid has been made according to the tenor of the treaty, at least in such manner that the Company acquiesced therein, and have nothing to object or desire further on that head." But they even then complained that since the conclusion of the peace, viz., in 1715, "the French had made a settlement at the head of Albany River, upon which very river our principal factory is settled,

whereby they intercept the Indian trade from coming to the Company's factories ; and will, in time, utterly ruin the trade, if not prevented. It is, therefore, proposed and desired, that a boundary or dividend line may be drawn so as to exclude the French from coming anywhere to the northward of the latitude of 49°, except on the coast of Labrador ; unless this is done, the Company's factories at the bottom of Hudson's Bay cannot be secure, or their trade preserved." This shows that the Company there sought to establish an arbitrary boundary, and that the object of it was, to secure the fur trade from the French.

The English Commissioners made the demand to have limits established according to the prayer of the Hudson's Bay Company, and for the giving up the new fort erected by the French ; adding a demand that the French should make no establishments on any of the rivers which discharged themselves into Hudson's Bay ; and that the entire course of the navigation of these rivers should be left free to the Company, and to such of the Indians as desired to trade with them.

The precise terms of the instructions to the Commissioners hardly seem to have contemplated the latter part of the demand, for they (the instructions of 3rd September, 1719) merely designate the boundaries beyond which the French and English respectively are not to cross. They contain this passage, however : " But you are to take especial care in wording such articles as shall be agreed upon with the Commissioners of His Most Christian Majesty upon this head : that the said boundaries be understood to regard the trade of the Hudson's Bay Company only."

Colonel Bladen, on the 7th November, 1719, wrote to the Lords of Trade that the English Commissioners would that day deliver in the demand, and that he foresaw " some difficulty in the execution of this affair, there being at least the difference of 2° between the best French maps and that which the Company delivered us, as your Lordship will perceive by the carte I send you herewith."

Colonel Bladen was right. After receiving the English demands, the French Commissioners, the Marechal d'Estrees and the Abbé Dubois, never met the English Commissioners again, and all the instances of the English Ambassadors failed to procure a renewal of the conferences.

The Company were again called upon on the 25th July, 1750, to lay before the Lords of Trade an account of the limits and boundaries of the territory granted to them. They replied, among other things, that the said Straits and Bay "are now so well known, that it is apprehended they stand in no need of any particular description than by the chart or map herewith delivered, and the limits or boundaries of the land and countries lying round the same, comprised, as your memorialists conceive, in the said grant, are as follows : that is to say, all the lands lying on the east side or coast of the said Bay, and extending from the Bay eastward to the Atlantic Ocean and Davis' Strait, and the line hereafter mentioned as the east and south-eastern boundaries of the said Company's territories ; and towards the north, all the lands that lie at the north end, or on the north side or coast of the said Bay, and extending from the Bay northwards to the utmost limits of the lands, then towards the North Pole ; but where or how these lands terminate is hitherto unknown ; and towards the west, all the lands that lie on the west side or coast of the said Bay, and extending from the said Bay westward to the utmost limits of those lands ; but where or how these lands terminate to the westward is also unknown, though probably it will be found they terminate on the Great South Sea ; and towards the south," they propose the line already set out by them, before and soon after the Treaty of Utrecht, stating that the Commissioners under that treaty were never able to bring the settlement of the said limits to a final conclusion ; but they urged that the limits of the territories granted to them, and of the places appertaining to the French, should be settled upon the footing above mentioned.

APPENDIX S.

MEMORANDUM.

The Commissioner of Crown Lands submits the following remarks on the North-West Territories of Canada, Hudson Bay, the Indian Territories and the Questions of Boundary and Jurisdiction connected therewith, to accompany the other Documents:

The question now under special consideration has more particular reference to the subject of the renewal of a Lease held by the Hudson's Bay Company for the "*Indian Territories*," which are not considered to be within the boundaries of Canada, though subject to Canadian jurisdiction.

But the Hudson's Bay Company's "Map and Statement of Rights," under the original Charter, as submitted to the Imperial Government in 1850 by Sir J. H. Pelly, the Chairman of the Company, has also however to be considered in connection with it.

It becomes necessary therefore to expose the fallacies of the "Statement of Rights and Map" referred to, in order that the rights of the Province may not be misunderstood or the pretensions of the Company taken for granted.

The rights of the Hudson's Bay Company and the effect of their operations upon the interests of Canada, will best be considered under the following separate heads, viz.:

First.—With respect to their operations under the original Charter on the territories affected thereby.

Second.—With respect to their operations within the boundaries of this Province, on what has been termed the Indian Territories, now under lease to them.

Third.—With respect to their operations.

Fourth.—Arising out of the foregoing, the more important question of the Boundaries of the above Territorial Divisions and

Fifth.—With respect to jurisdiction as exercised and as sanctioned by law.

OPERATIONS OF THE COMPANY ON THEIR OWN TERRITORIES.

On the first head, as regards their operations under their Charter on the territories which, if valid, it would cover, it is a matter of very secondary importance to Canada. The territories of the Hudson's Bay Company, taken at the largest extent which any sound construction of their Charter in connection with international rights would warrant, if not in point of distance so very remote, are nevertheless so situated, that it can only be when all the localities to the south and west, more available for purposes of agriculture and settlement, have been filled to overflowing, that settlers may be gradually forced into that vicinity from the superabundant population of more favoured countries.

The most direct interest that Canada could have in the matter at the present moment, being responsible for the administration of justice there, would be rather of a moral and political than of an interested or commercial character. But as the necessities of the Company, in whose hands a monopoly of the trade has practically existed since the Treaty of Utrecht, together with the powers which they profess to derive from their Charter, has induced them to establish a jurisdiction which, for the moment, seems to have been successful in maintaining tranquillity and order, Canada has had no special reason to intervene, though if any complaints had been made on this score she would of course have felt called upon to exercise the powers vested in her by Imperial Statutes.

It is not indeed to be denied that the freedom of the trade, consisting of furs and fisheries, would be of advantage to this country ; but as this involves a question of the validity of the Charter, and whether or not, if valid in respect of the territory really affected by it, it would also affect the open sea of the Bay, and seeing that the question is not now raised of any

further legislation to give effect to the powers it professes to confer, the consideration of this point is immaterial at the present moment compared with the more important subjects that have to be treated of.

OPERATIONS OF THE COMPANY ON CANADIAN TERRITORIES.

The second point to be taken into consideration, and which is of a more important nature, is that which affects the operations of the Company within the boundaries of Canada, and on this head it must be admitted that they have had every facility they could possibly enjoy in their own territories, if such exist: whether on the coasts of Labrador, Lakes Huron, Superior or Winnipeg; whether on the Saguenay, the St. Maurice, the Ottawa, the Red River, the Assiniboine or the Saskatchewan; wherever they have operated within the boundaries of Canada, they have had precisely the same scope as within their own territories on the shores of Hudson's Bay: not indeed but what if opposition had sprung up, the same facilities must necessarily have been afforded to any rival traders, had they not been effectually protected from such rivalry by their unlimited means, their extensive ramifications and complete organization, with which no rival traders were able to compete, unless indeed to a very limited extent in the immediate vicinity of the settlements.

There are indeed parts of the Province so remote from established settlements, and having so little direct intercourse with them, that in former years it might have been to some extent a tax upon the country to have established tribunals sufficient to enforce the laws over regions inhabited only, with one exception, by the servants of the Company and the Indians, though it may now be reasonably questioned whether corresponding benefits would not have accrued from such a course, while it must be admitted that the Company have at all events reaped a profit, taking together the costs they have been put to from the want of legal tribunals and the monopoly of the

trade which the non-organization of such tribunals has practically been the means of enabling them to enjoy.

The exception referred to, where a considerable settlement exists, besides the employees of the Company and the Indians, is the Red River Country.

But the time has passed when any considerations of expense or temporary inconvenience, even if proved to exist, can be allowed to stand in the way of opening up those territories, when indeed the necessity for expansion compels the Provincial Government to create further facilities for it; and as an additional reason why the Government should no longer permit the present state of things to continue, it must be added that rumours have been gaining ground of late years, with a force and clearness that almost compel conviction, that the jurisdiction actually exercised in those remote localities has been as contrary to the wishes of the people as it has been manifestly without the sanction of the law, all which has created a necessity for early investigation and action on the part of the Canadian Government.

With this view preparations were made in the Crown Lands Department last summer for a preliminary survey from the head of Lake Superior westward, preparatory to the opening of free grant roads, which have been so successful in other parts of the country, for the purpose of forming the nucleus of a settlement which would gradually penetrate to the valley of the Red River and the prairies beyond; besides which a first-class thoroughfare would be necessary to afford easier means of communication with the navigable waters flowing to the west, &c., to facilitate the administration of justice in the distant settlements, and the necessary intercourse generally between those parts and the more populous districts of the country, and which would at the same time throw open to emigration, agriculture and commerce a far larger area, with at least an equal average mildness of climate, and susceptible of more rapid development (a known characteristic of prairie countries), than all other parts of the Province heretofore rendered available for settlement.

The question of the renewal of the license of exclusive trade on the Indian Territories does not, of course, affect the country above referred to, any more than it does the lands, whatever they be, for they have never been defined upon authority, which the original Charter of the Hudson's Bay Company may, upon investigation, be construed to cover.

OPERATIONS OF THE COMPANY ON THE INDIAN TERRITORIES.

The third point is, for the moment, of less importance than the last, though within the period of another such lease as the Act 1 & 2 Geo. 4, cap. 66, authorises, as it would be impossible to calculate the immense influence it must have upon the future of this country, and the British institutions which have taken root so deeply and thrive so nobly on its soil. The present operations of the Hudson's Bay Company on these "Indian Territories" are conducted on the same principle precisely as within the boundaries of Canada, the jurisdiction they exercise having heretofore had the excuse of necessity, if not the sanction of law, and so far as it can be shewn to have been exercised to the benefit of those countries, the Company might fairly claim indemnity for the consequences, should that become necessary, and there is no reason to doubt either the generosity or the justice of the Legislature if called upon to ratify such a measure.

It now becomes necessary, under the fourth head, to treat the questions of boundary arising out of the three foregoing; and these questions have, heretofore, been so little understood, that it will be necessary to enter into the subject at some length.

The difficulty of describing definite boundaries in countries which at the time were but very imperfectly or partially known, has always been a matter of serious embarrassment. In the present instance, however, the difficulties can only be in matters of detail, and it may be safely assumed that they will be still further lessened by the fact, that wherever uncertainty

can be supposed to prevail in any point of real importance, it can only be between the Province of Canada on the one hand, and the "Indian Territories" on the other (not between Canada and the Territories of the Hudson's Bay Company, unless at a point of comparatively little consequence); and it would be difficult to conceive that it could be adverse to the interests of the Crown or the community, if the principal question of boundary were sunk altogether, and the whole of the "Indian Territories" incorporated with this Province.

BOUNDARY OF THE COMPANY'S TERRITORIES UNDER CHARTER
OF 1670.

In the first place, then, with respect to the Territory affected by the Charter of the Hudson's Bay Company, it may be admitted that it would not only be difficult but absolutely impossible to define it; it is therefore fortunate that its limited extent renders the question of little importance further than that it becomes necessary to consider and rebut the very large pretensions of the Company.

The extent of the territory affected by the Charter is subject to two distinct conditions:

First—It is confined to all such territory as was then the property of the donor.

Second—It is confined to all such unknown territories as by the discoveries of the Company, his subjects, might become his property.

These distinctions, though not directly expressed, are nevertheless conditions resulting from the circumstances, and necessary to a proper understanding of the case.

With respect to the first, viz., the territory which was the property of the donor, it is necessarily limited by usage and by common sense to what was known or discovered, for the unknown and undiscovered could not be his property and might never become his property, that being dependent upon *circumstances* then in the future: it is further limited by spe-

cific condition, expressed in the Charter itself, to such portions of what was then known as did not belong to any other Christian Prince, which condition, it must be admitted, was an acknowledgment on the part of the donor that some part of the territory he was describing was not his, and of doubt as to what did or did not belong to him.

With respect to the extent of territory that *might have been* affected by the second condition above stated (that is, as regards exclusive trade, the grant of soil being less extensive and more ambiguous), it has no particular limit, for it embraces all countries which could be reached either by "water or land" through Hudson's Straits, and to limit or extend it merely to the sources of rivers discharging into Hudson's Bay would be a construction which the Charter will in no sense admit of. But while it extends to all unknown or infidel nations, which the Company could reach through Hudson's Straits or Bay, it is at the same time inferentially and *necessarily* restricted from extending to any of those unknown parts which might be first discovered and possessed by the subjects of any other Christian Prince or State. This is not indeed expressed in the Charter in relation to undiscovered territories, but it is emphatically so as regards the then state of the rights and possessions of Christian Powers. While the King therefore is so careful, at least in the wording of the document, not to infringe upon the rights of others *already acquired*, it can scarcely be supposed that he meant to infringe upon the rights of others *to acquire* what then belonged to none. The inference is altogether against the supposition that King Charles meant by his Charter to deny the right of any other civilized nation to make further discoveries and appropriate the countries discovered, and, even if he had so intended it, he had not the power to alter the law of nations in this respect. Besides, the Charter is expressly one of discovery as well as trade, &c.; the advantages granted to the "adventurers" are incidental and subordinate to that greater object, but there could be no *discovery* on their part wherever

they were preceded by prior discovery and possession on the part of the subjects of any other Christian Prince. The right of discovery is and was so well established, and wherever considered of any importance, has been so jealously watched that volumes of diplomatic controversy have been written on single cases of dispute, and the King of Great Britain could not by his Charter annul the recognized law of nations, or limit in any degree the right of other States to discover and possess countries then unknown. It may even be considered extravagant to affirm that he could convey a right of property to territories *not then*, but which might *afterwards become* his or his successors' by the prior discovery and possession of the Company themselves, his subjects: were it necessary to dwell upon this point, it could easily be shown that most of the territories now claimed under the Charter which were not discovered at that date, the Company were not afterwards the first nor were any other British subjects the first discoverers of; that, in fact, except the Coppermine River, the Company never discovered anything or penetrated beyond the *Coasts and Confines* of the Bay (to which perhaps they at that time justly considered their rights restricted) for upwards of a hundred years after the date of their Charter, and that when they did so penetrate, the only *discovery* they made was that the whole country in the interior had been long in the peaceful possession of the subjects of another Christian Prince.

But the position as regards discovery after the date of the Charter, it is unnecessary to dwell upon, particularly as an adverse title can be proved prior to the date of the Charter, and that too sanctioned by treaty.

The early discovery and occupation of the country in and about Hudson's Bay are, as in many other cases, shrouded in a good deal of obscurity. The British claim as the first discoverers of the whole coast of this part of North America, in the persons of John and Sebastian Cabot, about the year 1497; but it is contended on the other hand that their discoveries did not extend to the north of Newfoundland, which still

retains the name they gave it, and which they supposed to form part of the main land. It is *said* indeed that the Cabots penetrated to a very high latitude far to the north of the Straits now bearing the name of Hudson ; but it must be remarked that there appear to be no authentic records of the two voyages of the Cabots, their journals or observations. There appears to be only *hearsay* evidence of what they did, or where they went, told afterwards at second-hand to third parties. The voyages of the Cabots, therefore, although they are matters of history, not admitting of any reasonable doubt, in a general way, as to their having reached the coast of America, lose much of their force as the bases of specific territorial claims, from the want of any record of their proceedings. Did they ever land ? If so, where ? What observations did they make ? Did they take formal possession ? &c.

The French claim through fishermen of Brittany who established fisheries on the coast as early as 1504, and through a map published by Jean Deny, of Honfleur, in 1506. The map would be valuable if any authentic copy of it be extant. There does not appear to be any such record of the operations of the Breton fishermen as would fix precisely the spot where their trade was carried on, though a British geographical work, published in 1671, with a map attached, fixes it at Hudson's Straits, naming the country after them, on the south side of the Straits and within the Bay. The next navigator through whom the French claim is maintained is John Verëzzani, who visited the country by order of Francis the First of France, in 1523-4. This is the first voyage, in behalf of either France or England, of which any authentic and circumstantial record exists, as written by the navigator himself, who gave the country the name of New France. In 1534, Jacques Cartier's discoveries commenced, and these are so well known that it is unnecessary to say more of them.

Thus, then, it appears that the Cabots' voyages, unsustained by any authentic record, affording no means of basing even a

probable surmise as to whether so much as a landing was effected, formal possession taken, or any act done to constitute the assumption of sovereignty or of territorial dominion, comprise the only grounds on which England can base a claim to the country north of Newfoundland, prior to the voyage of Jacques Cartier. Apart, therefore, from the question of "*beneficial interests*" (to use the expression of a British diplomatist) which were acquired by France, commencing with the discoveries of Cartier, the preponderance of *admissible* evidence is altogether in favour of French discovery of that part of the continent between Newfoundland and Hudson's Bay. But, even if the question rested altogether between the unauthenticated discoveries of the Cabots and the commencement of settlement by Cartier, it would not be inappropriate to assume the British view of a similar question as maintained in the Oregon dispute, in the following words :

" In the first place, it is a circumstance not to be lost sight of, that it (the discovery by Gray) was not for several years followed up by any act which could give it value in a national point of view : *it was not in truth made known to the world either by the discoverer himself or by his Government.*"

The next English attempts at discovery commenced in 1553, when Willoughby penetrated to the north of Hudson's Bay, which, however, he did not discover or enter. This was nineteen years after Jacques Cartier's first voyage, and was followed by various other attempts at finding a north-west passage, all apparently directed to the north of Hudson's Straits, until 1610, the period of Hudson's voyage, in which he perished after wintering in the Bay which bears his name ; but by this time it must be observed that Canada was colonized by the French.

In 1540, De Roberval was made Viceroy of Canada, the description of which as given in his commission included Hudson's Bay, though not then of course known by that name.

L'Escarbot gives a full description of Canada at the period of De La Roche's appointment in 1598, as follows :

“ Ainsi notre Nouvelle France a pour limites du côté d’ouest les terres jusqu’à la mer dite Pacifique au deça du tropique du cancer ; au midi les îles de la mer Atlantique du côté de Cuba et l’Isle Espagnole ; au levant la mer du nord, qui baigne la Nouvelle France ; et au Septentrion cette terre, que est dite inconnue, vers la mer glacée jusqu’au Pole Artique.” *

Notwithstanding failures and difficulties, France continued the effort to colonize Canada, and in 1598 De La Roche was appointed Governor of the whole of Canada as above described : in 1603 or 1604 the first exclusive Charter was granted for the fur trade of Canada up to the 54th degree of north latitude : in 1608 Champlain founded the City of Quebec, and in 1613 he accompanied his Indian allies, to the number of between two and three thousand, up the Ottawa and by Lake Nipissing and the French River, to war with a hostile nation at the Sault St. Marie. It must now be observed that the great incentive to the colonization of Canada was the enormous profits of the fur trade, without which it is scarcely likely that such persevering efforts would have been made for that purpose while so many countries with more genial climates remained in a manner unappropriated.

Tadousac, at the mouth of the Saguenay River, was the most important Post established by the French on the St. Lawrence ; it was the entrepot of the fur trade before Quebec was founded, and continued to be so afterwards. This will not be deemed extraordinary when it is considered that the Saguenay River afforded the best means of access into the interior, and was the best inland route, in fact is the best canoe route yet, to the great Bay bearing the name of Hudson. There is indeed no authentic record of any of the French having made an overland journey to the Bay at so early a period, but when it is considered at what an early date the *Coueurs des Bois* traversed the whole country in search of

* Therefore, New France has for boundaries on the west the Pacific Ocean within the Tropic of Cancer : on the south the Islands of the Atlantic towards Cuba and the Spanish Island or Hispanolia ; on the east the Northern sea which washes its shores, embracing on the north the lands called unknown, towards the frozen sea, up to the Arctic Pole.

peltries, how readily they amalgamated with the Indians, who in that locality were in friendly alliance with them, and when it is also considered what extraordinary journeys the Indians undertook, as instanced by the war carried into the enemy's country at the Sault St. Marie, already referred to, the presumption is that the fur traders of Tadousac not only enjoyed the trade of the great bay, but must also have penetrated very far in that direction, if not to the Bay itself, a journey at the most of less distance and not greater difficulty than that which Champlain successfully accomplished with an army, while it had the strong incentive of profit to stimulate it. It is not necessary, however, to prove that every corner of the country known to the world as New France or Canada had been first visited by the actual possessors of the region so known.

However strong the probabilities, therefore, of the *Coureurs des Bois* having been in communication with the great northern Bay before the visit of Hudson in 1610, or of Button, who succeeded him in 1612, it is not necessary to base any argument thereon; nor is it necessary to dwell on the reputed voyage of Jean Alphonse, of Saintonge, in 1545, which, although quoted by French historians, does not appear to be sufficiently authenticated. For, granting that the rights accruing from discovery resulted from the voyages of Hudson and Button, these discoveries were practically abandoned, in fact were never dreamt of being followed up by way of occupation, the finding of a north-west passage being their sole object; but waiving even this point, it will be found that the rights of France were made good by international treaty long before the Charter of Charles the Second was granted.

It will be seen from L'Escarbot's description, and those contained in the commissions of the Governors already referred to, that France claimed the whole country extending to the north of Hudson's Bay, her title resting in the first instance upon the discoveries already mentioned, of which those of Verezzani, Cartier and Champlain are of unquestioned authen-

ticity, to which they had added, when L'Escarbot wrote in 1611, the title resulting from actual possession in the shape of permanent settlement. England, on the other hand, claiming under Cabot's discovery, denied the right of France generally to the whole and practically to the more southerly parts where she endeavoured to plant settlements of her own, in which she was successful at a period somewhat later than the French. The fact is, each was trying to grasp more than she could take actual possession of; and if mere discovery of parts of a continent without actual possession or settlement were made the basis of permanent rights, neither of the contending parties would perhaps have had any right at all. Gradually the state of the actual possessions of the two Powers settled down into a sort of intelligible shape, though without any very distinct boundaries, the most northerly of the English possessions being known as New England, and *all* the country to the north thereof being known as new France or Canada, where the French *only* were in possession, there being no possession or settlement of any kind to the north of them. Still, had England colonized Hudson's Bay at that period and been successful in keeping actual possession of it, she would just have had the same right to do so that she had to colonize New England. That England persevered with extraordinary energy in trying to find a north-west passage there can be no doubt, nor does it appear that France, though publicly claiming the country, made any objection, but neither country made the most distant attempt at settlement or occupation of those remote and inhospitable regions at that period.

In 1615 another expedition was made into Hudson's Bay, in search of a north-west passage, by Baffin and Bylot. In 1627, the Quebec Fur Company was formed under the auspices of Cardinal Richelieu, and an exclusive Charter granted to them for the whole of New France or Canada, described as extending to the Arctic Circle. In 1629, Quebec was taken by the British, as were also most of the other principal towns founded by the French in Acadia and Nurembegia (now Nova Scotia and

New Brunswick), which were then Provinces of New France, the two nations being then at war. In 1631, Fox and James, on two different expeditions, prosecuted a further search for a north-west passage in Hudson's Bay, and from the latter of these navigators the southerly portion of the Bay takes its name.

At this period the authenticated voyages of the English into Hudson's Bay were Hudson in 1610, Button in 1612, Bylot and Baffin in 1615, and Fox and James in 1631; the numerous other expeditions having been all apparently directed to the north of Hudson's Straits. At the same time the extent of New France or Canada, as claimed by the French, was publicly known throughout the civilized nations of Europe. It is not necessary to say that that claim was admitted by Great Britain; it is sufficient that it was known. British authorities even of a later period, it must be observed, have contended that the French were intruders in America altogether, in violation of the title accrued through the discoveries of the Cabots, and had no right whatever to any part of it *until acquired by treaty*. It therefore becomes immaterial whether the claims of the French were disputed or not, so far as they were afterwards confirmed or a title created by Treaty.

In 1632, peace was concluded, and by the Treaty of St. Germain-en-Laye, Canada or New France was relinquished to the French without any particular designation of its limits, and the British forces were to be withdrawn from the places they had taken, which being the most important, including the seat of government, might almost be said to have amounted to the conquest of the whole country.

Admitting, then, that but a disputed title of discovery had previously existed on either part—nay, admitting more, that the right vested by prior discovery was in England, this Treaty sets the matter at rest as regards all that was at that time called by the name of New France or Canada. There is indeed no getting behind this treaty, of which the Charter *afterwards* granted by Charles the Second was in fact, but for

the saving clause it contains, a violation, and Canada might well be content to rest her case here as against a Charter which, referring to a country previously guaranteed by the treaty to a foreign power, is expressly conditioned (as a Charter of discovery) not to interfere with what belonged to that other power. If, as is asserted by some English writers, France had no rights in America but such as she acquired by Treaty, what, it may be asked, were the limits of the territory she acquired by the Treaty of St. Germain-en-Laye, if not all that she claimed under the name of New France? It must be observed too that Champlain, the Viceroy of Canada, was made prisoner when Quebec was taken in 1629, and carried to England, where he remained for some time, and that the very year in which the Treaty was entered into, he published a work, containing a map of New France, by which Hudson's Bay was included in the country so called. Can it then for a moment be supposed, with Champlain, the Viceroy of New France, a prisoner in their hands, and their flag floating in triumph from the battlements of its capital, that the British Government and the Diplomats who negotiated the Treaty were ignorant of the meaning attached to the terms "Canada" or "New France," or could attach any other meaning to those terms than that which Champlain's published maps of a previous date indicated, and with which the descriptions of other French writers whose works were known throughout Europe coincided? Can it be supposed that in the negotiations preceding the Treaty, Champlain's views of the extent or boundaries of his Viceroyalty were wholly unknown, or that the British Diplomats meant something else by the appellation than what was known to be understood by France? If, indeed, something less than the known extent of the country called New France had been agreed upon, some explanation would undoubtedly have been contained in the Treaty, or, if there had been any misunderstanding on the subject, the map which issued the same year, in Champlain's work of 1632, would at once have been made a cause of remonstrance, for,

coming from the Chief Officer of the Colony, who was re-appointed to or continued in his office after the Peace, and published in Paris under the auspices of the King, it could not be otherwise looked upon than as an official declaration of the sense in which France regarded the Treaty.

Even, then, if the rights of France were wholly dependent upon international Treaties, her right became as good by the Treaty of St. Germain-en-Laye to the shores of Hudson's Bay as to the shores of the St. Lawrence. If she had rights before, the Treaty confirmed them; and if she had no rights before, the Treaty created them; and in either case, the effect was as great in the one locality as the other. Every further step, however, in the history of the country will only tend to show that even if there had been no such treaty as that of St. Germain-en-Laye, the Charter could not be sustained in opposition to the rights of France.

The provisions of the Treaty of 1682 seem to have been respected for a period of 36 years, when in 1668 the next English expedition entered the Bay, which was the first *trading voyage* ever made by British subjects to the Bay, and which resulted in the formation of the Hudson's Bay Company and the grant of the Charter two years after. In saying that this was the first purely commercial enterprise of the British in Hudson's Bay, it is not meant to be implied that no trade was had with the Indians by those engaged in the former expeditions, but that such enterprises were undertaken with the definite object of reaching the Pacific, and without the least idea of any practical occupation of, or trade with the country.

The British having ceased any attempt upon Hudson's Bay from the time of Fox and James' voyages and the Treaty of St. Germain-en-Laye for a period of 36 years, it now remains to be seen what the character of this their next attempt was, and what had been the circumstances of the country in the interim.

That the name of Canada or New France continued to attach to the whole country during that period is indisputable;

the French published maps of these times leave no doubt upon the subject; and when we find the French not only designating the country by these names in their maps published by royal authority, but also entering upon the practical occupation of the since disputed parts of the country so designated, the carrying on of the trade with it both by sea and land, and the establishing of missions, all within the period intervening between the Treaty of St. Germain-en-Laye and the granting of the Charter, or the voyage which preceded the Charter, and all without interference on the part of Great Britain, we must conclude that the rights of the French were incontestable, and that if ever an adverse claim had been preferred it was considered to have been abrogated by the Treaty.

In 1656 the first exclusively commercial sea voyage was made into Hudson's Bay by Jean Bourdon, who found the trade in furs so profitable that others immediately followed. The first missionary establishment was made in 1663 by La Couture, who went overland by direction of D'Avangour, Governor of Canada, who had been twice solicited by deputations of Indians from the Bay to send them missionaries; and now the French being fully established in the trade and in the occupation of the country both by sea and land, of the coast and of the interior, the English "Adventurers" first appear upon the scene, in a business way, under the countenance of two Canadians, De Grozelier and Radisson, who having been already engaged in the trade of the Bay, and having failed in procuring certain privileges they desired from their own Government, went to England and induced some Englishmen to join them in a trading voyage in 1668, which was so successful that, as already stated, it resulted in the formation of a Company, and the grant in 1670 of one of those extraordinary Charters which were so much in vogue in those days that the whole of the Continent of America, north of the Gulf of Mexico, known and unknown, may be said to have been covered by them, and some of it doubly so if the vague and ambiguous descriptions, of which this was the most vague, could be said to mean anything.

This was the origin of the Hudson's Bay Company, and they immediately commenced to build forts and establish themselves in the trade, but no sooner was this known in France than orders were given to expel them. Accordingly a desultory warfare was kept up for a number of years between the Canadian traders and the Company, in which the latter were nearly expelled, but again recovered themselves and strengthened their position when it became necessary to take more effective means for their expulsion. Troops were accordingly despatched from Quebec overland for that purpose under the Chevalier De Troyes, who commenced his work very effectually by taking the principal Forts of the Company. It must be observed, that this was in 1686, in time of peace between Great Britain and France, and yet these proceedings were not made a cause of war, which in itself would strongly imply an admitted right on the part of France to extirpate the Company as trespassers upon her territory.

War having afterwards broken out, the Forts on Hudson's Bay were successively taken and retaken, till the Peace of Ryswick, in 1697, put a stop to hostilities, at which time the British appear to have been possessed of Fort Albany *only*, the Canadians having possession of all the other establishments and the trade of the Bay.

By the Treaty of Ryswick, Great Britain and France were respectively to deliver up to each other generally whatever possessions either held before the outbreak of the war, and it was specially provided that this should be applicable to the places in Hudson's Bay taken by the French during the peace which preceded the war, which, though retaken by the British during the war, were to be given up to the French. There could scarcely be a stronger acknowledgment of the right of France to expel the Company as trespassers upon her soil, for it is impossible to construe the Treaty in this particular otherwise than as a justification of the act.

Moreover, commissioners were to be appointed in pursuance of the Treaty, to determine the rights and pretensions

which either nation had to the places in Hudson's Bay. Had these commissioners ever met, of which there appears to be no record, there might have been a decision that would have set the question at rest as to which were "*rights*" and which were "*pretensions*." The commissioners must, however, have been bound by the text of the Treaty wherever it was explicit. They *might* have decided that France had a right to the whole, but they would *not* have decided that Great Britain had a right to the whole. They would have been compelled to make over to France all the places she took during the peace which preceded the war, for in that the Treaty left them no discretion. The following are the words of the Treaty: "But the possession of those places which were taken by the French, during the peace that preceded this present war, and were retaken by the English during the war, shall be left to the French by virtue of the foregoing article." Thus the Treaty of Ryswick recognised and confirmed the right of France to certain places in Hudson's Bay distinctly and definitely, but recognized no right at all on the part of Great Britain; it merely provided a tribunal to try whether she had any or not.

So strongly has the Treaty of Ryswick been interpreted in favour of France in this particular, that some historians merely state the fact, that by it she retained all Hudson's Bay, and the places of which she was in possession at the beginning of the war.

The commissioners having apparently never met to try the question of right, things remained *in statu quo*, and the most reliable accounts show that the Hudson's Bay Company retained possession of Fort Albany *only* from that time up to the Treaty of Utrecht in 1713. Now, whatever the commissioners might have done, had they ever passed judgment on the cause the Treaty provided they should try, they could not have given Fort Albany to the British, for it was one of the places taken by the French during the preceding peace and retaken by the British during the war, and therefore adjudged in direct terms of the Treaty to belong to France.

Thus then it will be seen, that the only possession held by the Hudson's Bay Company during the sixteen years that intervened between the Treaty of Ryswick and the Treaty of Utrecht was one to which they had no right, and which the obligations of the Treaty required should be given up to France.

Here, therefore, for the second time an International Treaty interposes a barrier against the pretensions of the Company.

By the Treaty of Utrecht in 1713, the whole of the Hudson's Bay was ceded to Great Britain without any distinct definition of boundaries, for the determining of which commissioners were to be appointed. No official statement of the action of such commissioners is at present available for reference, but it is stated that no such action threw any additional light upon the subject. Indeed no such Commissions ever have done much to determine boundaries in unexplored countries, as witness for instance the dispute so long pending on what was called the North Eastern boundary question between Great Britain and the United States, which was finally compromised by the Treaty of Washington, concluded by Lord Ashburton; and again the difficulties arising out of the same ambiguous description, and which so many Commissions endeavoured in vain to settle between the Provinces of Canada and New Brunswick.

There is no denying the fact that the ancient boundaries of Canada or New France were circumscribed by the Treaty of Utrecht, and it is difficult to determine precisely the new boundaries assigned to it. The general interpretation adopted by the British geographers, as the country gradually became better known from that time up to the final cession of Canada, was that the boundary ran along the high lands separating the waters that discharge into the St. Lawrence from those that discharge into Hudson's Bay to the sources of the Nipigon River, and thence along the northerly division of the same range of high lands dividing the waters flowing direct to Hudson's Bay from those flowing into Lake Winnipeg and crossing the

Nelson, or rather (as it was then known) the Bourbon River, about midway between the said Lake and Bay, thence passing to the west and north by the sources of Churchill River, &c., no westerly boundary being anywhere assigned to Canada. It may indeed be held doubtful whether the terms in which Hudson's Bay was ceded could possibly be interpreted to mean more than the Bay and its immediate environs, but whatever the legitimate interpretation of the Treaty, the actual *acceptation* of it gave to France *at least* all to the south of the dividing high lands above described, for she remained in undisputed possession thereof until the final cession of Canada in 1763; while on the other hand the acceptance of it on the part of Great Britain, as proved by the same test of occupation, confined her at least to the north of the said high lands, if not to the very shore of the Bay, beyond which her actual possession never extended.

It must here be observed, however, that the Treaty of Utrecht conferred nothing upon the *Hudson's Bay Company*. It gave them nothing that was not theirs at the Treaty of Ryswick, and the Treaty of Ryswick gave them nothing that was not theirs before. The Charter obtained from King Charles the Second may have granted all that was his (if anything) to grant in 1670, but it would have required a new Charter to have granted what France ceded to Great Britain forty-three years afterwards. No doubt the Treaty of Utrecht had this important bearing upon the Company, that although it conferred no territorial rights upon them, the territory it conferred on Great Britain was then inaccessible to British subjects by any other route than through the Bay and Straits of Hudson, over which (if anything) the Company's Charter gave exclusive control, and over which, whether rightfully or wrongfully, they have exercised such control.

Matters continued in this state as regards the territorial rights of Great Britain and France for 50 years more, when Canada was ceded to Great Britain by the Treaty of Paris in 1763. During this period the Hudson's Bay Company occu-

pied the posts on the coasts of the Bay, *and these only*, having made no attempt to penetrate into the interior or occupy even what the *British Geographers* of the time construed the Treaty of Utrecht as conferring, not upon the Company, but upon Great Britain; while on the other hand the French had covered that part of New France which still remained to them (according to the British authorities) with posts or forts from the Lake of the Woods to the lower end of Lake Winnipeg, and remained in peaceable possession thereof, and in the most active prosecution of the trade, until the whole country was given up to the British by the Peace of Paris, in 1763; by which, however, nothing was conferred upon the Hudson's Bay Company any more than there had been by the Treaty of Utrecht, the rights acquired by these treaties being simply in common with other British subjects.

For a few years, about the time of the transfer of Canada from French to British dominion, the trade of the western territories languished, from a very natural want of confidence on the part of the Canadians by whom it had, up to that time, been carried on, and who now owed a new allegiance and had to seek a new market for the produce of their industry; but a fresh impulse was soon given to it, first by separate individuals, then by small companies, and finally by the great North-west Company of Montreal, who not only spread their operations over all the territories formerly possessed by the French, but explored new countries to the north and west, while the Hudson's Bay Company had not yet made a single establishment beyond the immediate confines of the sea coast.

The temporary depression of the fur trade at the period of the transfer of Canada to British dominion was of course advantageous to the Hudson's Bay Company, for the Indians inhabiting those parts of Canada where the French posts were established around Lake Winnipeg and its tributaries, would naturally seek a market in Hudson's Bay during the comparative cessation of demand at the establishments in their midst. But when confidence was restored and a new impulse was

given to the trade in the north-west of Canada, the supply was again cut off from Hudson's Bay, and now the Company *for the first time* entered into competition with the Canadian traders *in the interior*, where their first establishment was made in 1774. And why, it may be asked, did not the Hudson's Bay Company oppose the French Canadians in the interior a few years earlier, as well as they opposed them (principally the same people) now that they had become British subjects? The answer is very simple. During French dominion they could not do it because the country belonged to France, but by the cession of the country to Great Britain, the Company had acquired the same right as any other British subjects to trade in it, and they availed themselves of that right accordingly.

From this period an active competition was carried on between these companies, but the Canadian North-west Company were everywhere in advance of their rivals. They were the first to spread themselves beyond the limits of the French, over the prairies of the Saskatchewan; they were the first to discover the great river of the north, now bearing the name of McKenzie, and pursue its course to its discharge in the Frozen Ocean; they were the first to penetrate the passes of the northern Cordilleras and plant their posts upon the shores of the Pacific; and with such indomitable energy did they carry on their business, that at the period of Lord Selkirk's interference, they had upwards of 300 Canadians, "*Voyageurs*," employed in carrying on their trade to the west of the Rocky Mountains.

It would be a useless task now to enter into a detail of the attempt made by the Earl of Selkirk, as a partner of the Hudson's Bay Company, to ruin their opponents. It is only necessary to refer to it here as the first endeavour made to exercise the privileges contended for under the Charter over those territories which had not been acquired by Great Britain till the conquest or cession of Canada. Lord Selkirk having become the principal partner and acquired a predominant

influence in the affairs of the Hudson's Bay Company, it was determined to assert the assumed privileges of the Company to an extent never before attempted, and for this purpose a grant of the country on the Red River was made to his lordship, who commenced in 1811-12 to plant a colony there.* A Governor was appointed, the colonists and the servants of the Company were armed and drilled, and in 1814 the claims of the Company to soil, jurisdiction and exclusive trade were openly asserted, and for the first time attempted to be enforced by the actual expulsion of the North-west Company, several of whose forts were surprised and taken, their people being made prisoners, their goods seized, and the channel of their trade obstructed by the interception of their supplies. Overawed somewhat for the moment by this bold assumption of authority, the Canadian Company appear to have avoided the contest, but when forced into it they proved the stronger: the Governor was killed in leading an attack upon a party of the North-west Company who turned and gave battle, and the colony was dispersed. This final catastrophe occurred in the spring of 1816, while in the meantime Lord Selkirk was organizing a more formidable force than had hitherto taken the field. Having procured a commission of the peace from the Government of Canada, he engaged a large force of the disbanded DeMeuron soldiers, equipped them in military style, procured arms, ammunition, artillery even, and started for the interior.

It must be allowed that it was a somewhat anomalous course for the Government of Canada to have pursued to permit such a force to be organised; but when it is considered that great ignorance prevailed as to the state of those remote

* "Who have been the aggressors in their different quarrels, I am not able to determine; however, previous to 1811, at which time Lord Selkirk became connected with the company trading in Hudson's Bay, and sent settlers from Europe to that country, no great differences existed between the servants of that Company and the fur traders of Canada. There might be difficulties between different posts, but seldom attended with serious consequences."—Despatch of Lieutenant-Governor Gore to Earl Bathurst, 9th September, 1816.

localities, that it was known that there had been disturbances and bloodshed the previous year, when also Lord Selkirk's position is considered, and that he went as a pacificator professedly to maintain peace, it may not be deemed so extraordinary that so much confidence should have been placed in him, for he was even granted a sergeant's guard of regular troops. It is not the object here, however, to enter into a discussion of the unfortunate occurrences of that period, or the particular action of the provincial government, and the circumstances are only referred to, to show that Canada actually exercised the jurisdiction, that Lord Selkirk's destination was the Red River Colony, and that he deemed it necessary to fortify himself doubly with commissions as a Canadian magistrate, first for Canadian territory, and second (under 43 Geo. 3rd) for the "*Indian territories*," so that those who resisted his authority on the ground that they were in Canada, he could judge under the one commission, and those who resisted on the ground that they were in the Indian territories, he could judge under the other, while the judicial and governmental attributes claimed for the Company would have served as a third basis of operations; and thus with the actual force at his disposal there was a pretty fair prospect of the Hudson's Bay Company being made the absolute masters of the north-west country.

At the Sault Ste. Marie, however, Lord Selkirk met intelligence of the death of Governor Semple and the dispersion of his colony; nevertheless he still proceeded with his force as far as Fort William, on Lake Superior, where he arrived about the 11th of August, 1816, and soon after arrested the partners of the North-West Company, who were there at the time, and took possession of the whole establishment, including the merchandise and stores of the Company. The course pursued on this occasion, as appears by documents published at the time, shews the character of the pretensions set up at that period—pretensions which were then and not till then presumed upon.

It will be observed that Fort William was the principal depot of the Canadian merchants, through which all their supplies for and peltries from the north-west had to pass. By seizing on this point therefore Lord Selkirk had possession of the key of their whole trade, and was enabled to permit or refuse the transmit of their goods as he saw fit. For whatever purpose, therefore, he obtained his two commissions of the peace in Canada, the expedition simply resolved itself into a continuation of the attempt to destroy the North-west Company of Canada, the rivals in trade of the Hudson's Bay Company, for, however desirable it might be to arrest and bring to trial all parties implicated on either side in the death of Governor Semple, there could be no excuse for seizing the persons of those gentlemen who were known not to have been at the time within hundreds of miles of the scene of that catastrophe, merely because they were partners in the North-west Company, nor, even if there were cause for their arrest, did that justify the taking possession of their property without the sanction or the form of law.*

The object of entering upon this brief record is, to point out that all this occurred at *Fort William*, on the shores of Lake Superior, within what the Hudson's Bay Company, by their map and statement of "rights," now admit to be within the boundaries of Canada. And thus it will be seen that, while the pretension of extending the privileges of the Charter beyond the "coasts and confines" of the bay to the western territories of Canada, was a mere invention of that period, to further their own ends and to destroy the rival company of Canada, they were as ready to employ force at Fort William as in the valley of the Red River.

In further proof that the transactions at Fort William were openly done in violation of Canadian law and in defiance of

* "From these Documents it appears, that the Earl of Selkirk, acting in his own cause, aided by an armed force, has not only made the Partners of the North-west Company prisoners, but has also seized their Papers and Property."—*Lieut.-Gov. Gore to Earl Bathuret, 9th Sept., 1816.*

Canadian authority, it is only necessary to add that when Lord Selkirk's proceedings became known, warrants were issued for his apprehension and a party of constables sent to arrest him, and that refusing obedience to the laws of this country and presuming upon the force for the moment at his command in that remote locality (remote *then* as regards the *time* it took to reach it, though at our doors to-day), he caused the constables to be taken prisoners themselves, and treated the Deputy Sheriff of the western district, who afterwards made the attempt, in like manner.

This war between the Companies, though injurious to both, failed to exterminate either, and the final result was a compromise by which they entered into partnership; and thus the trade has been carried on since, under the name indeed of the Hudson's Bay Company, but *expressly* in conjunction with the North-west Company of Canada, so that Canada can at no time be said to have been out of possession of her western territories within the limits occupied by the French at the time of the conquest, nor out of possession of the "Indian Territories" beyond, which, after the conquest, were first discovered by the Canadian traders, and for which the license of exclusive trade was granted to the partners of the North-west Company of Canada, as such, in conjunction with the Hudson's Bay Company.

It is true that after the amalgamation of the Companies and the license of exclusive trade granted in 1821, competition became *illegal* in the "*Indian Territories*," beyond the boundaries of Canada, as indeed it had always proved *impracticable* on the part of minor traders either within or beyond the remote parts of the province, small traders being altogether unable to cope with the two great Companies. It is true also that after they, the two great Companies, had been for some time united, and when by the policy pursued by them the trade had ceased to be beneficial to, and had been lost sight of in, Canada, an arrangement was effected between the two sections of the united Company by which the name of the North-west Com-

pany was dropped entirely, the lease relinquished, and a new one obtained in which the name of the Hudson's Bay Company alone appeared ; but it must be observed that this new arrangement was accepted and entered into by the British government by consent of the partners representing the original Canadian Company, for although this lease or license only affects the Indian Territories beyond the actual boundaries of Canada, it can scarcely be supposed that the government would have agreed to give it, had Canadian traders still remained in the field. The policy of the Companies, when joined, has however been so far successful that they have managed heretofore to secure themselves against opposition, many no doubt being imposed upon by the pretentious but erroneous construction put upon their Charter, and the public in general kept in the dark respecting a trade which, though partly carried on in the very centre of Canada and within range of steam navigation, is so managed as to pass by a circuitous route, by means of the primitive canoe and over portages on men's backs, away hundreds of miles into the interior and round by Hudson's Bay.

But the time has come when Canada must assert her rights, not only from that necessity for expansion which her growing population and trade require, but also because if she does not now begin to provide for the future by opening up her remote territories to colonisation, and securing the loyalty and attachment of the people by extending to them the rights and privileges of her laws and institutions, there is a moral certainty that a power far more formidable than the Hudson's Bay Company must in a very short period acquire the actual possession of those countries.

This brief chronological sketch of the history of the Company and of the circumstances connected therewith, must sufficiently shew that they have acquired no territorial grant whatever under either of the two conditions stated to which their Charter was subject : first as regards the countries then *known upon the "coasts and confines"* of Hudson's Bay, be-

cause they were already in the possession of the subjects of another Christian Prince, and were therefore excluded from the grant in terms of the Charter itself; and second, as regards discoveries, because when they first penetrated into the interior, 104 years after the date of their Charter, they found the country and a long-established trade in the hands of others,—unless indeed as regards some discoveries to the north which are of no special importance to Canada, such as the Copper Mine River, discovered by Hearne under the auspices of the Company.

Under the first head the most sanguine advocate of the Company, upon a full investigation of all the circumstances, could only urge on their behalf a claim to certain points, or stations, on the sea coasts of the bay, and even to these a doubtful and disputed title.

The high legal authorities that may be quoted in favour of the claims of the Company cannot be held as of weight against the conclusions inevitably resulting from a fuller investigation of the subject, inasmuch as they are merely opinions *upon the cases submitted*. The latest opinion given upon the subject is that of Sir John Jervis and Sir John Romilly in their letter to Earl Grey, of January, 1850, in which they give it as their opinion, "That the rights claimed by the Company do properly belong to them." Before arriving at this conclusion, however, these learned gentlemen are careful to specify precisely what papers they had then under consideration, and to which alone they refer as the basis of their opinion. These papers were simply the "*Statement of Rights and the Map*" submitted by the chairman of the Company, Sir J. H. Pelly.

This opinion, therefore, can only be taken as affirmative of the power of the King to grant such rights and privileges as the Charter specifies, and that the Charter would cover all the territory claimed, but the question of whether that territory belonged to the King to grant was not before them. With respect to the territory which the wording of the Charter

would cover, it would be difficult to say what it would not cover; and with respect to the validity of the grant of such powers, it is to be remarked that very high authorities have given a directly opposite opinion; and it may be asked why, if the Charter was valid, did the Company procure an Act of Parliament to confirm it in 1690, and why when that Act expired, which was limited to seven years, did they again ask for an Act to continue it? It is worthy of notice, too, that the seven years' Act was passed during war with France, when it appears that Parliament did not scruple to grant or confirm a Charter for countries to which Great Britain had, at best, but a disputed title, based only upon a very partial, and, even during peace, a very precarious possession; nor is it less worthy of remark, that, when Parliament refused to re-grant or continue the Charter the Treaty of Ryswick had intervened, by which the rights of France were recognised, and those of Great Britain left, at most, in doubt, and when, therefore, any such Act would have been a direct violation of an international Treaty.

Another opinion appears to have been obtained by the Hudson's Bay Company at an earlier period, from Romilly, Holroyd, Cruse, Scarlett and Bell, equally upon the case drawn and without reference to the real points at issue, merely affirming that the grant of the soil contained in the Charter is good, and that it will include all the countries the waters of which flow into Hudson's Bay. This opinion is therefore, like the other, of no weight on questions which were not before the learned gentlemen who gave it.

Opposite opinions were obtained at an earlier period by the North-west Company, viz., in 1804, from Sir V. Gibbs and Mr. Bearcroft. These opinions, however, although they touched the fundamental principles of the Charter, had no reference to the interior countries on the Red River, Lake Winnipeg, the Saskatchewan, &c., for the simple reason that no opinion was asked on a case which only arose six or seven years later, when Lord Selkirk came on the field.

The position of the question at this period was that the North-west Company, being in possession not only of all the country formerly possessed by the Canadian French in that direction, but also of the country first discovered by themselves, to the north-west of Churchill River, came to the conclusion that their trade could be more conveniently carried on with these more remote parts through Hudson's Bay than through Canada. The question they submitted therefore was solely in regard to the validity of the Charter in respect of the navigation, trade and fisheries of the bay itself. The North-west Company as little dreamt of asking an opinion respecting the legality of their trade in the interior as the Hudson's Bay Company thought, at that period, of attempting its forcible restraint. In the case put it is to be remarked that no reference is made to the early possessions of the French on the coasts of the bay, and consequent possession of the bay itself in communicating therewith, and yet, and even without this, these opinions are entirely adverse to the exclusive privileges claimed under the Charter.

After the difficulties occasioned by the more recent assumption of power in virtue of the Charter to expel the North-west Company from the Red River country, under the auspices of Lord Selkirk, had become serious, another opinion was obtained by that Company in 1816, from Sir Arthur Pigott, Sergeant Spankie and Lord Brougham. This opinion must be held to be more valuable than those obtained by the Hudson's Bay Company, inasmuch as it enters more into the merits of the case, and is therefore more explicit as to the real views of the learned counsel on the subject submitted to them, whereas the opposite opinions are such as the gentlemen who gave them would be at liberty to ignore upon a fuller submission of the case, without incurring a charge of inconsistency.

The opinion under consideration is very decided on the point that the Red River and Saskatchewan countries are not within the limits of the Charter, even upon the merits of the description contained in the Charter itself, apart from the

question of prior possession by another State. The question of prior occupation of these localities by the French is indeed lightly touched upon, though the opinion, as above, is definitely given without it ; but the rights of Canada now for the first time fully discussed, based on prior discovery, at least of the whole of the interior, prior occupation on the shores of the bay itself, and international treaties, do not appear to have ever been pronounced upon by any of those high legal authorities who have heretofore been consulted, because no such case has ever been submitted ; and yet, based upon history and facts it may be taken to supersede all necessity for raising any question as to the extent of the royal prerogative in giving validity to such a Charter.

Had the Hudson's Bay Company indeed deemed their position good in law, as against the North-west Company, in respect of the Red River country, it can scarcely be supposed that they would have resorted to force at such a lavish expense (and it must be added, involving no small amount of bloodshed) when the question could have been so easily determined by the legal tribunals, at an expense altogether inconsiderable as compared with the actual losses and costs incurred. They have indeed attempted to shew that they had not an equal chance with their rivals in the courts of this Province ; but not to speak of the injustice of such an insinuation in itself, the objection is untenable while *they had the right of appeal*, and to suppose that they were deterred from taking such a course from any difficulty attending the proceeding would be simply absurd, when we find them organising an *army* to defend their claims in those remote localities, and thus voluntarily removing the venue from the courts of law, by a far more difficult and expensive process, to the arbitrament of force, where the interference of law could not be so readily invoked to check their proceedings.

And if any justification of this course could be based on the supposed validity of their Charter, and on the ground that it could be construed to cover that locality, why, when they

failed to maintain their position by force, when the Northwest Company, even after the temporary interruption of their trade through the seizure of Fort William by Lord Selkirk, still continued in the ascendant, why did they not then resort to a trial at law, which, if it had resulted in their favour, would at once have secured a power exactly commensurate with the emergency to maintain their rights? for then, if the civil power had proved insufficient the whole power of the empire would have been available as far as necessary. But instead of trying the issue in a Court of Law they finally amalgamated with their rivals, affording thereby a clear proof that they had no hope of being able to treat them otherwise than as possessing equal rights, thus consenting to their opponents sharing with them what they had previously contended to be their private property.

To conclude the question of the Hudson's Bay Company's territories under their Charter, therefore, it is difficult to arrive at the result that they have any territorial rights at all, for in the first place the country was practically occupied by the French before the date of the Charter and consequently excluded from it; and in the second place, because the whole country, including Hudson's Bay, was known as New France or Canada, as per maps and descriptions publicly known throughout Europe previous to that date, and therefore, if not so before, became the property of France by the Treaty of St. Germain-en-Laye, in 1632, and as such *necessarily could not be* and *expressly was not* granted by their Charter; and in the third place, because by the Treaty of Ryswick the right of France to expel them as trespassers on her soil was manifestly admitted. And finally, even assuming that Great Britain originally had acquired a divided right with France, each to the extent of the establishments which their subjects respectively were the first to form, the Hudson's Bay Company would only have a right, under their Charter, to those particular posts, or forts, which they were the first to take possession of in localities previously unoccupied, for the Treaty

of Ryswick conferred nothing upon them (if it even permitted them to retain anything, which is doubtful); the Treaty of Utrecht, although it gave Hudson's Bay to the British, conferred nothing upon the Company, apart from other British subjects; and the Treaty of Paris (although it gave Canada to Great Britain) conferred nothing upon them, except rights in common with other British subjects; while until eleven years after the last named treaty they never occupied anything beyond their original establishments on the coast, and those (also on the coast) conquered from or ceded by France at the Treaty of Utrecht, but which could not, by subsequent conquest, or cession, be made subject to their Charter.

BOUNDARIES OF CANADA.

Having thus disposed of the boundaries of the Hudson's Bay Company's Territories—if such can be said to exist—the boundaries of Canada next come to be considered, and a division of the subject will naturally suggest itself into two heads. First, the original boundaries of Canada as acquired under the French; and second, the boundaries of Canada as acquired by Great Britain in 1763. The southerly boundaries, when not affecting the present question, need not of course be particularly referred to.

It will not be necessary to enter at length into the question of the original boundaries under the French, as they have already been sufficiently indicated. They *claimed* all to the north of the St. Lawrence, and were the first to *occupy* Hudson's Bay. If the British, besides their visits in search of a north-west passage, had seen fit to occupy the country for any practical purpose and been the first to do so, they might no doubt have claimed it for their own. Had any such actual occupation followed the voyages of Hudson and Button, notwithstanding the French footing on and claim to the whole continent north of the St. Lawrence, it must be admitted that a valid title would have been created. But when such occu-

pation was only first attempted some fifty or sixty years later, in support of a commercial project of two Frenchmen who had been already engaged in the trade, and when France was in formal and actual possession, it cannot be denied that the French title was the preferable one. Of the original territories of Canada, Great Britain therefore acquired a part by the Treaty of Utrecht, the residue remaining to France for fifty years later. On this head there seems to be no dispute, for British authorities designate a part of what they claim to have been acquired by that treaty as Canada.

It now remains to be considered what were the boundaries of the country finally acquired by the Treaty of 1763, which, according to French and other authorities, was much larger than according to British authorities ; but it will perhaps be most satisfactory for the present to adopt the latter.

One of the most circumstantial British accounts of the westerly possessions of the French is to be found in a geographical and historical work published by Thos. Jefferys in 1760. After giving the French account of Canada, he proceeds to give the English version of its boundaries in the following words :

"Canada, according to the English account, is bounded on the north by the high lands which separate it from the country about Hudson's Bay, Labrador or New Briton, and the country of the Eskimeaux and the Christeneaux ; on the east by the River St. Lawrence ; and on the south by the Outawais River, the country of the Six Nations and Louisiana, *its limits towards the west extending over countries and nations hitherto undiscovered.*"

The high lands referred to in the above are distinctly delineated on the maps published with the work as the northerly section of the range which, dividing to the north-west of Lake Superior, separates the waters flowing direct to Hudson's Bay from those flowing into Lake Winnipeg, crossing the Nelson River at Split Lake or Lac des Forts, etc. Describing the country from Lake Superior westward the author goes on, at page 19, as follows :

"At the north of Les Trois Rivières, or the Three Rivers, is a little French Fort

called Camenistagouia ; and twenty-five leagues to the west of the said fort, the land begins to slope and the river to run towards the west.

" At ninety-five leagues from this greatest height lies the second establishment of the French that way, called Fort St. Pierre, in the Lake des Pluies. The third is Fort St. Charles, eighty leagues further on the Lake des Bois. The fourth is Fort Maurepas, a hundred leagues distant from the last, near the head of the Lake of Ouinipigon. Fort La Reine, which is the fifth, lies a hundred leagues further on the river of the Assiniboels. Another Fort had been built on the River Rouge, but was deserted on account of its vicinity to the two last. The sixth, Fort Dauphin, stands on the west side of Lac des Prairies, or of the Meadows ; and the seventh, which is called Fort Bourbon, stands on the shore of the Great Lake Bourbon. The chain ends with Fort Poskoyac, at the bottom of a river of that name, which falls into Lake Bourbon. The River Poskoyac is made by De Lisle and Buache to rise within twenty-five leagues of their west sea, which they say communicates with the Pacific ocean. *All these Forts are under the Governor of Canada.*"

The above, it will be observed, is the English account of what was still French Canada in 1760, just after the taking of Quebec and before the final conquest and cession of the country. The River Poskoyac is that which now bears the name of the Saskatchewan, upon which Sir Alexander McKenzie states that the French had another Fort higher up than Fort Poskoyac.*

The same author, Jefferys, in his description of Louisiana, says: "It is bounded on the N. by Canada; on the E. by the British Colonies of New York, Pennsylvania, Maryland, Virginia, &c., &c." The map accompanying this description claims the British Colonies, Virginia, &c., as coming up to the east bank of the Mississippi, and therefore it is Louisiana west of the Mississippi that he refers to as bounded by Canada on the north, that is to say, from the sources of the Mississippi westward.

The same year in which this work was published, all Canada was surrendered to the British, though not finally ceded till three years after.

* "It may be proper to observe, that the French had two settlements upon the Saskatchewan, long before, and at the conquest of Canada ; the first at the Pasquia, near Carrot River, and the other at Nipawi, where they had agricultural instruments and wheel carriages, marks of both being found about those establishments, where the soil is excellent."—Note to General History of the Fur Trade, p. lxiii. See McKenzie's *Voyages*. London, 1801.

In surrendering the country to the British, the Marquis de Vaudreuil submitted articles of capitulation which were marked "granted," or "refused, etc.," according as they were finally agreed to by General Amherst. In guarding the interests of the Canadian colonists in every part of the country surrendered, the localities above described by English authority as being under the "Governor of Canada," are designated as "*the Countries above*," and the 46th article of the capitulation is as follows :

"The Inhabitants and Merchants shall enjoy all the privileges of trade under the same favours and conditions granted to the subjects of Her Britannic Majesty as well in the *Countries above* as in the interior of the Colony.—Granted."

By which these countries were manifestly surrendered along with the rest of Canada, and the future rights of the Canadians guaranteed thereto by the provision that no British subjects should ever enjoy any privileges of trade there in which they did not share; not indeed that this guarantee, although it would decidedly have that effect, could have been foreseen as a safeguard against the Hudson's Bay Company who had never at that period penetrated into the country, it being simply intended to prevent any cause whatever from depriving the French colonists of the benefits of a trade which had always been one of the most important in the country.

In the negotiations for peace that followed in 1761, which were directed on the one part by Mr. Pitt, and by the Duke de Choiseul on the other, and which ended, for the time, in failure, France contended for the boundaries of Louisiana extending to Canada, which Great Britain opposed. Finally, the Treaty of 1763 allowed Louisiana to extend west of the Mississippi to its source, and made that river from its source downwards the boundary between the British and French possessions, the boundary from the source of the Mississippi westward being left undetermined, a question which had ultimately to be settled with the United States instead of with France.

The system adopted and industriously followed up by the two rival Companies after their union had indeed so disseminated an erroneous appellation, that the country north and north-west of the Mississippi had come to be commonly called the Hudson's Bay Company's Territories; but when diplomatists and statesmen came to consider the subject, tracing up from history and fact their respective claims, as bearing upon the Oregon question, they did not stultify themselves by the use of such an erroneous term; accordingly we find Mr. Buchanan, now President elect of the United States, using the following language, in concluding a proposition made by him on 1st July, 1846:

"The line proposed will carry out the principle of continuity equally for both parties, by extending the limits both of *ancient Louisiana and Canada* to the Pacific along the same parallel of latitude which divide *them* east of the Rocky Mountains."

The same line of argument sustains the British plenipotentiary when, in urging the pretensions of his Government to Oregon, he traces the progress of the Canadians westward across the Rocky Mountains to the Pacific.

The next step in the natural progress of events is the description of Canada under British sway. The first step after the Treaty of Paris was to provide for the government of the settled parts of the country, for which purpose the Government of Quebec was organised, comprising however a very limited portion of Canada, as per proclamation of 7th October, 1763, the rest of the country being thereby reserved from survey or settlement, for the moment, for the protection of the Indians. The description of Canada, however, of that period took in the country to the westward of Pennsylvania, by the Ohio River, to the Mississippi. And the Imperial Statute of 1774, commonly called the "Quebec Act," describes the Province as extending "Northward to the Southern Boundary of the Territory granted to the Merchants Adventurers of England trading to Hudson's Bay," *but does not specify what their boundaries are*, and it will be seen, by what follows, that the

construction put upon this Act by the British Government, nine years later, was adverse to the present pretensions of the Company. The Treaty of Independence of the United States provided a new southerly boundary for Canada, a part of what had formerly gone under that name having been ceded to the United States; and by the commission issued to Lord Dorchester—the first after this Treaty—the same words are used in describing the boundaries of Canada, as in the Treaty, viz. :

“Through Lake Superior northwards of the Isles Royal and Philipeaux to the Long Lake; thence, through the middle of the said Long Lake and the water communication between it and the Lake of the Woods, to the said Lake of the Woods; thence, through the said Lake to the most north-western point thereof, and from thence, in a due west course to the River Mississippi and northward to the southern boundary of the territories granted to the Merchants Adventurers of England trading to Hudson's Bay.”

This description, it will be seen, leaves the boundaries beyond the sources of the Mississippi indeterminate. On the supposition that a line due west from the Lake of the Woods would intersect the Mississippi, the King was obliged to limit the extent of Canada on such line to the Mississippi proper, because by the Treaty of Paris, France retained the whole country to the west of the Mississippi from its source downwards. Had the King's Commission said from the intersection of the *due west* line with the Mississippi “*due north*,” it might have been argued that it provided a westerly boundary, but it simply says “*northerly*,” because although it was necessary to limit it to the Mississippi, where Louisiana commenced, there is no need for being specific beyond the sources of that river where the westerly boundary of Canada was yet unknown. Of the extent of Canada to the north by this description, it is enough to say that it was the same as by the Act of 1774, and required the boundaries of the territory granted to the Hudson's Bay Company to be defined *first*, and if that failed it had no other limit, short of its original extent under the French.

At the “definitive Treaty of Peace” with the United States

their territory did not extend at any point to the west of the Mississippi, until they acquired Louisiana in 1803. It will be remembered that Mr. Pitt objected to the northerly boundary of Louisiana coming so far north as the southerly boundary of Canada in 1761, that nevertheless it was so settled in 1763 that the Mississippi should be the boundary to its source. This result seems to have been a compromise by which Louisiana was confined almost entirely to the west of the Mississippi, Great Britain thus gaining her point on the east, which came more nearly in contact with her old possessions, and giving to France entire scope on the west to the very sources of the Mississippi, the boundary from thence westward being left undetermined. This point had accordingly to be afterwards settled with the United States, who had in the meantime acquired the rights of France. This settlement ultimately admitted the 49th parallel of latitude as the northerly boundary of Louisiana, and as such necessarily the southerly boundary of Canada from the Lake of the Woods due west to the Rocky Mountains, passing north of the source of the Mississippi proper, though intersecting some of its tributary streams, the only error in which was that the line should not have been north of the source of the Mississippi, an error resulting from a previous treaty with the United States, at a time when it was supposed that the parallel of latitude agreed upon east of the Mississippi would intersect that river.

Were the King's letters patent to Lord Dorchester indeed taken literally at the present day in regard to the southerly boundary of Canada, the due west line of the description, not intersecting the Mississippi, would go on as far as British territory, not otherwise organised, would carry it, which would be to the Pacific ; or if limited at all it would be by the first waters of the Mississippi which it did intersect, which would be the White Earth River, and this would in fact correspond with the extent of Canada previously known to the French, taking in all the old forts already mentioned and leaving out the " countries and nations hitherto undiscovered," that is at

the time of the conquest, though at the period when that description was made the North-west Company were carrying on an active trade much farther to the west: nor is it clear that this would be adverse to the intention of the description, for some of the maps of that period represent the Mississippi as west of the Red River.

The southerly boundary of the British dominions west of Lake Superior being therefore demonstrated as identical with the southerly boundary of Canada to *some point due west* of the Lake of the Woods, the only question is as to where that point is to be found; is it the White Earth River, the first waters of the Mississippi with which the due west line intersects? or is it the summit of the Rocky Mountains, on the same principle that the *co-terminous* boundary of Louisiana was ultimately so construed?

The next point to be determined is the northerly extension of Canada from its southerly boundary. The official description, corresponding with the Act of 1774, carries it to the boundary of the Hudson's Bay Company's Territories, but the same official description ignores the boundaries they claim, (*thus proving so far the construction then put upon the Act of 1774*), for it carries the southerly boundary of Canada down the watershed of Hudson's Bay from two to three hundred miles to the Lake of the Woods, and *thence due west*, thus making the starting point far within what the Hudson's Bay Company claim, and thus, *from a point within what they claim* as their territory, it is to extend northerly to their territories. If then the "rights" of the Hudson's Bay Company were even far less equivocal than they are, their southerly boundary, as pretended by themselves, is entirely demolished, and the question arises *where is the boundary of their territories so described as the northerly limit of Canada?* The question of territorial rights has already been so fully discussed that it is unnecessary to repeat the arguments. The only possible conclusion is, that Canada is either bounded in that direction by a few isolated posts on the shore of Hudson's Bay, or else that

the Company's territory is—like the intersection of the due west line with the Mississippi—a myth, and consequently that Canada has no particular limit in that direction.

The accompanying map illustrates the northerly boundary of Canada, according to British authorities, as ceded by the French in 1763, there being no westerly boundary then known or since provided. This is perhaps all that could in the first instance be absolutely claimed as under the Government of Canada, were it not that, since the final determination of the southerly boundary, the Imperial Government merely described the authority of this Government as extending over *all the countries theretofore known as Canada*, which might fairly be taken to cover the territory acquired by the Treaty of Utrecht, as well as that acquired by the Treaty of Paris.

BOUNDARIES OF THE INDIAN TERRITORIES.

The boundaries of the Indian Territories need little consideration or explanation, as they simply include all that belongs to Great Britain in North America to the north and west of Canada, excepting the Territory (if any) which the Hudson's Bay Company may of right claim. It must not be lost sight of, however, that the great bulk of this territory has been acquired by the Crown of Great Britain through discoveries of its Canadian subjects, beyond whatever may be determined to be the westerly boundary of Canada, across the Rocky Mountains to the shores of the Pacific, and by the McKenzie River to the Frozen Ocean. The importance of these discoveries in the negotiations pending the Treaty of Oregon cannot be forgotten, for it is in virtue of *Canadian Discovery* and *Canadian Settlement* that the British negotiator was enabled to maintain his position in the controversy, and secure a footing for his country on the Pacific. And when, it may be asked, did ever the Hudson's Bay Company afford such an important advantage to British interests?

Sir Alexander McKenzie's journey in 1793 across the Rocky

Mountains (the first ever performed north of Mexico) is thus referred to by the British Plenipotentiary, in negotiating the Treaty of Oregon :

“ While Vancouver was prosecuting discovery and exploration by sea, Sir Alexander McKenzie, a partner in the *North-west Company*, crossed the Rocky Mountains, discovered the head waters of the river since called Frazer's River, and following for some time the course of that river, effected a passage to the sea, being the first civilized man who traversed the continent of America from sea to sea in these latitudes. On the return of McKenzie to Canada the *North-west Company* established trading posts in the country to the westward of the Rocky Mountains.”

This was the British title to that part of the country, and but for this journey and the establishing of these trading posts, by which were acquired what the same diplomatist says “ may be called beneficial interests in those regions by commercial intercourse,” the probability is that Great Britain would now hold no continuous possessions across this continent, if she even held any isolated localities on the Pacific in virtue of her discoveries by sea.

Lewis and Clark, Americans, descended the southerly branch of the Columbia River, 1805, and in 1811, Mr. Thompson, of the *North-west Company*, came down the main branch from the north, whose discovery is thus referred to by the British Plenipotentiary :

“ In the year 1811, Thompson, the Astronomer of the *North-west Company*, discovered the northern head waters of the Columbia, and following its course till joined by the rivers previously discovered by Lewis and Clark, he continued his journey to the Pacific.”

And again :

“ Thompson, of the *North-west Company*, was the first civilized person who navigated the northern, in reality, the main branch of the Columbia, or traversed any part of the country drained by it.”

This is the title by which Great Britain has been enabled to retain the main branch of the Columbia to its intersection with the 49th parallel of north latitude, and the free navigation for her subjects of the whole river from that point to its discharge in the Pacific Ocean, as secured by the Treaty of Oregon, 1846.

With respect to McKenzie's discoveries to the north, no diplomatic reference thereto can be quoted, inasmuch as there has been no disputed title on the part of any foreign Power to give rise to any controversy upon the subject.

It may fairly be urged therefore, that these "Indian Territories," originally the fruits of Canadian enterprise, perseverance and industry, should no longer be shut out from the Canadian people, but should in fact be united to Canada as a part of the British Dominions, which Canadian subjects have had the merit of acquiring and retaining for the British Crown.

JURISDICTION.

The question of jurisdiction next comes under consideration, and in this, as regards the Hudson's Bay Company, it is apprehended that the actual exercise of it is widely different from what existing laws would sanction.

The mystery with which this Company have managed to shroud their operations in the interior renders it difficult to say what they do or what they do not do, but it is generally understood that they actually exercise unlimited jurisdiction in every respect, civil, criminal and governmental, and that not only in what has been considered their own territories, but also in the Indian Territories and those parts of Canada not immediately contiguous to settlement, all which existing law positively forbids them to do, it need not be said in Canada, but either in their own territories or in the Indian Territories.

By the Imperial Statute 43 George 3, chapter 138, the jurisdiction over the Indian Territories and all "*parts of America not within the limits of the provinces of Lower or Upper Canada, or either of them, or within any civil government of the United States of America,*" is vested in the said provinces. It is a curious circumstance that the very words of this Act, which seem to have been intended to deny all claim to any jurisdiction on the part of the Hudson's Bay Company, should have been taken hold of as the means of questioning its reference to them. The preamble of the Act, in giving the reason

for the enactment, states that offences not committed within the limits of the Canadas or the United States, as above, "are therefore not cognisable by any jurisdiction whatever." This the Company argued could not mean their territories, *because* jurisdiction *did* exist there. The Act, they said, could not mean *all* British America not within the limits of the Canadas, for the assertion that no jurisdiction existed was not true of Nova Scotia or New Brunswick, and therefore might not be true of Hudson's Bay. Thus, in fact, it appears that the framers of the Act having their minds directed to the northwest, where the offences referred to had occurred, forgot to exclude the provinces lying on the opposite side of Canada, on the Atlantic coast, from its operation; and this omission, when the war was carried on between the two Companies in the interior, Lord Selkirk turned to account to throw doubt on the applicability of the Act to the Company's Territories. But the assumption that this Act does not affect their pretensions is doubly futile; for, when more closely considered, it either brings their Territories within Canadian jurisdiction or it ignores them altogether, and in either case it contracts the limits they claim. If they make good their assertion that it does not affect their territories, then it destroys their claim to have their limits extended to the boundaries of Canada. The territories referred to in the preamble of the Act are those not within the limits of *either* Lower or Upper Canada, the two provinces being treated *distinctly* as regards the territories not within their limits. Now, taking Lower Canada in the first instance, it is bounded by the Ottawa, and a line due north from the head of Lake Temiscamingue, and the places outside its limits on which the Act would have effect, if not the Company's territories, must certainly be something between these limits and their territories. But the question is more important as regards the places outside of Upper Canada. If the maps accompanying the "Statement of Rights" submitted by Sir J. H. Pelly be correct, then the territory affected by the Act is about 1,500 miles

distant in its nearest part from the most remote point in Canada. In other words, Canada ends at the source of Pigeon River, and the Indian Territories begin at the top of the Rocky Mountains, and we are required therefore to assume that the Imperial Legislature meant to commit the absurdity of giving jurisdiction to the courts of Canada over a territory beginning at a distance of some fifteen hundred miles from her frontier, while a different British jurisdiction (that of the Company) prevailed in the intervening space. But assuming for fact the Company's view of the case, that it did not affect their territories, we find the very purpose for which the Act was passed as expressed in the title to be to provide a jurisdiction for certain parts of North America *adjoining* to the said provinces" of Lower and Upper Canada. Consequently, if the territory affected by the Act only commences at the summit of the Rocky Mountains, as represented by the map submitted by Sir J. H. Pelly, then as it *adjoins* this province, Canada must extend *to* the summit of the Rocky Mountains, so that on their own shewing the jurisdiction they exercise in the intervening space, at Red River for instance, is out of their own territories, and therefore not only without the sanction of law but in violation of a positive enactment. They must thus either ignore their own pretensions to the territory between what they call the westerly boundary of Canada, and easterly boundary of the "Indian Territories," or they must admit that the Act under consideration (which is still unrepealed) applies to their territories, in which case their jurisdiction in every part would be in violation of the statute.

But if there was any doubt on the subject before, it was fully removed by the Act 1 and 2 Geo. 4, Cap. 66, which was passed after all the strife and bloodshed in the north-west, and which, after reciting the doubt raised respecting the former Act being applicable to the Hudson's Bay Company's territories, declares at section 5 in the strongest and most comprehensive manner, that the said Act and all its clauses shall be construed to apply to their territories, anything in "*any grant or Charter to the Company to the contrary notwithstanding.*"

This Act, 1 and 2 Geo. 4, Cap. 66, gives jurisdiction as full and complete as language can make it over all the Indian and Hudson's Bay Company's Territories to the Courts of Canada, and it provides for the appointment of Justices of the Peace by the Crown (both for the Indian Territories and Hudson's Bay Company's Territories), to whom the *Canadian Courts are empowered* to issue commissions "to take evidence in any Cause or Suit and return the same, or try such issue, and for that purpose to hold courts, &c." These courts are most distinctly made subordinate to the Courts of Canada, &c., and can in fact be created by and exist through them only.

By the 11th and 12th clauses, however, the Crown is empowered to create Courts of Record, without the intervention of the Canadian Courts (but without limiting the power to be exercised through them), for the trial of small causes and petty offences, the former being limited to civil cases not affecting a larger amount than £200, and the latter to cases in which the offence does not subject the person committing the same to capital punishment or transportation.

By this Act it is repeatedly declared and enacted in the most emphatic manner, that its enactments shall have effect "notwithstanding anything contained in any Charter granted to the Governor and Company of Adventurers of England trading to Hudson's Bay."

It is true the last clause of the Act reserves to the Company in the most ample manner all rights and privileges they "are *by law entitled* to claim and exercise under their Charter." This it will be observed is what the "Statement of Rights" refers to when claiming a "*concurrent jurisdiction*" with the Canadian Courts. Now, when it is observed that the Legislature has refrained from expressing any opinion as to what the rights or privileges of the Company really are, and cautiously abstained from recognising any but what they already had "*by law*," it is difficult to suppose that it was the intention of the Act to recognise in them those very powers which it was making the most ample provision for the exer-

cise of by a totally different authority in strong and repeatedly expressed abnegation of their pretensions.

It is also to be observed that the previous Act, 43 Geo. 3, which denies their jurisdiction is still in force, unrestricted in every particular, and not deriving its force from the subsequent statute, which is merely *declaratory* in that particular of its proper construction.

The question of whether the Company can exercise any legal jurisdiction within their own territories,—limited to their just extent,—loses its importance however in face of the more serious question of its actual exercise both in Canada and the Indian Territories, and that even to the extent of life and death, while the intention of the Imperial Legislature in creating a jurisdiction for these territories, reserved all important cases, either civil or criminal, for trial by the regularly constituted legal tribunals of an organized community, where the *Charter* of British rights would be held as sacred as the interests of a commercial company who assume to be themselves the Judges where (without any reflection upon them collectively or individually) cases must, in the very nature of things, arise in which they ought to be judged.

It therefore becomes of very great moment to ascertain the truth of certain statements that have been made to the effect that their principal officers at the Red River hold their commissions from the Crown, and if so, under what form, for what extent of territory, and how described. Such commissions might no doubt have been issued under the statute 1 and 2 Geo. 4, for the Hudson's Bay Company's Territories and for the Indian Territories, for the trial of small causes and offences of a minor nature as already described, without in the least infringing upon or limiting the right of Canada to intervene; but if the British Government has expressly included the Red River country in any such commissions, it can only have been through a misapprehension of boundaries, which is not to be wondered at from the policy pursued since the union of the Companies, and the erroneous view of the

case they have so constantly disseminated, and no doubt any such powers, if they had been granted, would be withdrawn as soon as the case has been brought fully under the consideration of the Imperial authorities.

In concluding the question of Jurisdiction, it is necessary to observe that the Imperial Statutes herein quoted, which vest the jurisdiction in Canada to the shores of the Pacific, have been repealed in so far as they relate to Vancouver's Island by the Act 12-13 Vic., Cap. 48, which re-invests the jurisdiction of Vancouver's Island in the Imperial Government until the establishment of a local Legislature, which the Act contemplates.

At the same time, a charter was granted to the Hudson's Bay Company for the colonization of the Island, conveying a grant of the soil.

Neither the Act nor the Charter, however, confers any jurisdiction upon the Company.

The Company were required by the terms of the grant to colonize the Island within five years, failing which the grant was to become void. It was also stipulated that the grant might be recalled at the time of the expiration of their lease for the Indian Territories upon payment to the Company of the expenses they might have incurred, the value of their establishments, &c.

GENERAL REMARKS.

Before concluding this Report it is desirable to offer a few general remarks upon the subject, which the policy of the Company has kept out of view, and which consequently is not generally well understood.

The Hudson's Bay Company claim under three separate titles, the first of which is the Charter of Charles II., granted in 1670, *for ever*. The second is the lease originally granted in 1821 to them in conjunction with the North-west Company of Canada for the Indian Territories. The third is their title

to Vancouver's Island, as explained. Under the first they base their claim to government, jurisdiction and right of soil over the whole country watered by rivers falling into Hudson's Bay,—at least, such is the theory, although they have abandoned it south of the present southerly boundary of Canada at Rainy Lake, the Lake of the Woods and along the 49th parallel, to the south of which those rivers take their rise. Under the second, they claim exclusive trade from the Rocky Mountains west to the Pacific, and from the sources of the McKenzie River to the Frozen Ocean. There is no dispute about their title on this head, but their lease expires in two years, and it is a renewal of this lease for a further period of 21 years which they now seek to obtain.

It will be seen by the question of boundary already treated, that the country about Red River and Lake Winnipeg, etc., which they claim under their Charter, absolutely belongs to Canada; and it will be observed that the abstract right, not the value of the territory, has been dwelt upon, but unfortunately the latter has been as little generally understood as the former, the result of the means the Company have taken to conceal it, for seldom if ever has the wisdom and foresight of man devised a policy better calculated to the end for which it was intended than that adopted since the union of the Companies in 1821.

Before that union the Canadian Fur Trade gave employment to some thousands of men as mere carriers, or "*Voyageurs*" as they were termed.

In endeavouring to depreciate the national services rendered by the North-west Company during the war of 1812, at the capture of Michilimacinac, &c., Lord Selkirk alludes to this body of men as forming the "*Voyageurs Corps*," but denies credit to the Company for their important services, which he admits "in a great measure secured Canada," because they were not constantly employed by the Company, and effected this service at a season of the year when the Company did not require them. Assuming this to be the fact,

however, had there been then, as now, no such Company and no such trade, there would have been no such body of men ready for action in the hour of danger.

Had the circumstances of the trade continued the same to the present day, settlement must have followed the route of such a line of traffic, and the continual intercourse between this country and the fertile plains of the "far West" would have placed us as far in advance of our American neighbours in the colonization of those countries, as we are now behind them.

But the policy of the united Companies has been so admirably carried out in all its details, that an erroneous impression respecting the country and everything connected with it had gradually got possession of the public mind, and it is wonderful with what tact such impressions may sometimes be conveyed without any statement being made contrary to truth. The very appellation of "*Hudson's Bay Territory*," as applied for instance to the Red River country, carries a false impression with it, for the waters of the Mississippi and the Red River, the Assiniboine and the Missouri, interlace with each other there, and therefore the designation of "*Gulf of Mexico Territory*" would just be as correct. But what a different impression it would convey as regards climate. Again, almost every mention of the available parts of the Western Territories, which are well known to possess a soil and climate adapted in the highest degree for successful settlement, is interwoven with some reference to *ice* in some shape or other, which no doubt the Company truly encounter in carrying the trade some eight hundred miles due north through Hudson's Bay.

An admirable specimen of this kind of policy, by which erroneous impressions may be conveyed, is to be found in Sir J. H. Pelly's letter to Lord Glenelg, of 10th February, 1837 :—

"For many years prior to the conquest of Canada, French subjects *had penetrated by the St. Lawrence to the frontiers of Rupert's Land*; but no competition had occurred between the traders of the two countries *within the territories of the Hudson's Bay Company* previous to the cession of Canada to Great Britain.

"Subsequent to that period, the greater capital and activity of British subjects led to a competition, *first on the frontier parts, then in the interior*, and at last to the formation of a Company, combining all the individuals at that time engaged in the trade, to countries bordering on and west of Lake Superior, under the firm of the North-west Company of Montreal."

This when discussed is a significant paragraph. *Where are "the frontiers of Rupert's Land,"* if the French, whose Forts were all around Lake Winnipeg, had not reached them before the cession of Canada to Great Britain? This is an important corroboration of the views of the boundary question explained in the present report.

That "no competition had occurred within the Territories of the Hudson's Bay Company" up to that time may be very true, because the Company had never come up from the shores of the Bay, and the French had not gone down—from their places on Lake Winnipeg—to the Bay. The second paragraph above quoted may also be substantially true, but yet it is so framed as to convey to the general reader that the competition arose from the inhabitants of Canada advancing beyond where they had been before; whereas it was the Hudson's Bay Company who then came up, for the first time, from the shores of the Bay, which led to the competition "first on the frontier parts" of Rupert's land, "then in the interior," on Lake Winnipeg, the Saskatchewan, &c., where the Canadians had long enjoyed the trade without competition.

Such is the system and policy pursued by the Company to exclude from view and create erroneous impressions respecting the Western portion of this Province, than which there is perhaps no finer country in North America. The same course marks their proceedings at the present moment, for no intimation has been given to this country of their intention to apply for a renewal of the lease of the Indian Territories, though, exercising the privileges they do in countries subject to the Canadian Government, it would not have been unreasonable to expect a different course. Neither does it appear that they have taken any means to inform the inhabitants of those countries whose rights and interests are most deeply

affected by the action to be taken, that they were to make this early application for renewal of their lease. Had it been effected in the quiet manner they seem to have desired—a consummation which the thanks of the country are due to the Imperial Government for having refused to sanction—they *only* would have been heard in their own case, and the result would have been, alike to the people here and in the more remote territories, a surprise.

Canada has no quarrel with the Hudson's Bay Company, and desires no harsh measures towards them. It would be alike ruinous to them and injurious to the countries over which they hold either legal or illegal sway, to put a sudden stop to their operations, but it is an error to suppose that the governing of those countries is a task of uncommon difficulty. The state of anarchy which prevailed in those countries during the warfare of the Companies was the result of the strife between them, where there was no sort of authority, except what they seemed equally to wield, and not arising from any turbulent or ungovernable spirit on the part of the native population. On the contrary, the moment a recognized authority stepped in to control both Companies, implicit obedience was at once yielded to it throughout those vast territories, and either party would have found itself powerless to command followers for any purpose of further aggression. This was the occasion of the withdrawal of all commissions of the peace, previously granted to the leading people of the two Companies, the appointment of two special Commissioners (one of them a member of the Executive Council of Lower Canada), and the issuing of a proclamation in the name of the Prince Regent, by authority of a despatch from Earl Bathurst of 6th February, 1817, requiring the mutual restitution of all the places and property captured during the strife, to the party who had originally possessed the same, and the entire freedom of the trade to each party, until further adjudicated upon. Galling as this restitution must have been in numerous instances, where party feeling, embittered by the loss of many

lives, had reached the highest pitch of excitement, it was immediately complied with.

The proper course to pursue, therefore, would be to lay before the Imperial Government the expediency of annexing the Indian Territories to Canada, shewing that by this means only can those countries be retained long in the possession of Great Britain. For colonized they *must and will be*; it is only a question of who shall do it. If we do not, the Americans will, and that in spite of anything the Company can do to prevent it. That these Territories are fit fields for settlement it is useless to dispute, for one physical fact upsets all theories to the contrary. Where a country is found to sustain *animal life* to such an extent that hundreds of thousands of wild cattle find subsistence there both in summer and winter, there man also can find a home and plenty. Nor is the country possessing this characteristic confined to a narrow strip along the frontier, but continuing to widen to the westward it is found that the climate, even on the east side of the Rocky Mountains and at a depth of seven degrees North of the American Boundary, is milder than the average of the settled parts of Upper Canada.

On the west side of the Rocky Mountains the climate is mild to a still higher latitude, but Vancouver's Island together with the contiguous main land is perhaps one of the finest countries in the world for colonization. The only drawback is the difficulty of access, a difficulty which the present system will never remove, for it looms larger now than it did forty or fifty years ago, when the North-West Company of Canada poured a continuous stream of traffic across the continent. This Island cannot now of course be annexed to Canada on the same terms as the other Indian Territories, as the existing Charter under which the Island is held (a different and distinct thing, be it remembered, from either the old Charter or the expiring Lease) entitles the Hudson's Bay Company to payment of the value of their establishments if the grant be rescinded, which Canada would naturally be expected to pay if

the Island were conceded to her, and it might be well to see now upon what terms this could be done, because it seems that if it be not done at the expiration of the Lease of the "Indian Territories," it could not be done afterwards, unless indeed the Company have failed to fulfil the conditions required within the first five years.

Twelve years ago the United States had no communication with their territories on the Pacific except by sea, and during the Oregon negotiations, when proposing strenuous measures upon the subject, the President in his message to Congress, 2nd December, 1845, says :

"An overland mail is believed to be entirely practicable; and the importance of establishing such a mail at least once a month is submitted to the favourable consideration of Congress."

How different the circumstances now, and how "entirely practicable"; it has proved, need not be dwelt upon, but it must be remarked that at no other point, north of the Gulf of Mexico, are the facilities for communication across the continent anything like equal to what they are through Canada, there being good navigation three-fourths, if not more, of the whole distance; first to the head of Lake Superior, from whence the navigation is broken to Lake Winnipeg (though about 150 miles of this distance is navigable), then through that Lake to the Saskatchewan, on which there are obstructions, in the lower part near the Lake, from whence the navigation is impeded to the very base of the Rocky Mountains.

It would be very desirable, therefore, and quite practicable, if the British Government will consent to annex the Indian Territories, extending to the Pacific and Vancouver's Island, to Canada, to establish during summer a monthly communication across the continent. It is of incalculable importance that these measures should be most forcibly impressed upon the Imperial Government at the present juncture, for on their solution depends the question of whether this country shall ultimately become a Petty State, or one of the Great Powers of the earth; and not only that, but whether or not there

shall be a counterpoise favourable to British interests and modelled upon British institutions to counteract the preponderating influence—if not the absolute dominion—to which our great neighbour, the United States, must otherwise attain upon this continent.

No reference has been here made to the controversy between the Company and those who accuse them of exercising a pernicious influence over the Indian population, nor is it necessary to enter into the subject further than to point out the erroneous impression the Company strive to inculcate, to the effect that they are necessary to the Indians. It may well be that the state of things is better under them than it was when the two powerful Companies were in hostile array against each other; and it may be that their affairs are as well conducted, with reference to their effect upon the native population, as could well be expected of a Commercial Company, having the primary question of profit and loss as the object of their association. But the question really comes to be, whether those countries shall be kept in *statu quo* till the tide of population bursts in upon them, over an imaginary line, from a country where it has been the rule that the Indian must be driven from the lands the white man covets; or be opened up under the influence of the Canadian Government, which has always evinced the greatest sympathy towards the Indian race, and has protected them in the enjoyment of their rights and properties, not only in their remote hunting grounds, but in the midst of thickly-peopled districts of the country.

JOSEPH CAUCHON,

Commissioner of Crown Lands.

CROWN LANDS DEPARTMENT,
Toronto, 1857.

APPENDIX T.

No 1.

MR. BEARCROFT'S OPINION AS TO THE VALIDITY OF THE
CHARTER OF THE HUDSON'S BAY COMPANY.

Q. 1st. Whether the King, without the co-operation of the other Legislative powers, can grant to any company an exclusive trade for ever, together with a right of seizing the person and goods of a fellow-subject, without legal process; and if not, whether his having illegally granted such advantages and power, does not annul the charter?

A. I am of opinion that the King, without the assent of Parliament, cannot legally grant to any company, or to any individual, an exclusive trade for ever, together with a right to seize the person and goods of subjects, without process of law; and that such a grant, if made, is illegal, void, and without effect.

Q. 2nd. If this Charter is not valid upon the principle above stated, whether it is not voidable by the Company's neglecting to fulfil the views the King had when he granted it?

A. If such a Charter could be considered legal and valid in its commencement, yet it will be voidable by *Sci. Fa.* if the grantees neglect to endeavour, by reasonable and adequate means, to carry the purpose of it into effect.

Q. 3rd. Whether the grant to them, of the right of fishing, is exclusive, or whether the Greenland fishermen, who have a right to fish at Greenland and the seas adjacent, have not a right to fish at Hudson's Bay?

A. The Charter in question, as to so much of it as affects to grant an exclusive trade and inflict penalties and forfeitures, being, as I conceive, illegal and void, I am of opinion that the Greenland fishermen, who have a right to fish there, have also a right to fish in Hudson's Bay.

Q. 4th. If an individual invades the Charter, by fishing or trad-

ing in any of the places granted to the Company, and they seize his people, ship or goods, whether they have any and what remedy ?

A. If the Hudson's Bay Company, or those acting under their authority, shall venture to seize the person, ship, or goods of a British subject fishing there, the action is by action of trespass against the Company, or against the persons who do the act complained of, which action may be brought in any of the courts of Westminster Hall.

Q. 5th. If you should be of opinion that the Charter is in its present form illegal, which is the best way of attacking it—by invading the patent, and permitting them to seize or bring an action, and complaining or defending, according to the circumstances, or by applying to Parliament ?

A. It is obvious that the safest way of attacking the Charter is by applying to Parliament or by *Sci. Fa.*, though in case of seizure, I cannot help thinking an action of trespass by the party injured would be successful.

Q. 6th. And generally to advise the parties proposing the present case, who wish to fish and trade in and near Hudson's Bay (and have sent out a ship which means to winter there, unless cut off by the Company's engines, and only wait for your opinion whether to send several more), for the best ?

A. Upon the whole of this case, I am strongly inclined to think that the parties interested, if it is an object of importance to them, may venture to carry on the proposed trade immediately. The case of the East India Company and Sandys, determined at such a time, and by such Judges as it was, I cannot take to be law ; and as to the length the said Charter has been granted and enjoyed, it is a clear and a well-known maxim of law, that which is not valid in the beginning cannot become so by lapse of time.

(Signed) EDWARD BEARCROFT.

No. 2.

MR. GIBBS' OPINION.

1st. Such a Charter may certainly be good in some cases, but I am of opinion that the Charter in question was originally void, because it purports to confer on the Company exclusive privileges of trading which, I think, the Crown could not grant without the authority of Parliament. In Sandys against the East India Company, Skinn. 132, 165, 197, 223, the arguments used against their Charter, which was not then confirmed by Act of Parliament, appear to me decisive upon the subject; and although both J. Jefferies and the other Judges of the King's Bench decided in favour of the Charter, I have understood that their judgment was afterwards reversed in Parliament.

Adam Smith, in his *Wealth of Nations*, treats it as an admitted point, that the Charter granted to the Hudson's Bay Company, and others of the like sort, not being confirmed by Parliament, are void, which I mention, not as a legal authority, but only to shew how the question has been generally understood.

2nd. A Charter may be forfeited on this ground.

3rd. I should doubt whether they had by this acquiescence forfeited their exclusive privilege, if it ever existed; but this question is immaterial after my answer to the first.

4th. If the former were legal, this would be so likewise. I think them both legal, on the ground of my answer to the first query.

5th. Probably they might prosecute the captain; but if this question were material, it would be necessary that I should see a copy or abstract of the Charter before I could answer it.

6th. He might, if there were any legal cause of prosecution.

7th. I hardly think that they would be held to fall within this Act, nor does it signify whether they do or not. If my opinion is well founded, the North-West Company may

navigate Hudson's Bay and carry on their trade as they please, without any fear of legal molestation in consequence of the monopoly claimed by the Hudson's Bay Company under their Charter, and I think they may act as if no such Charter existed.

(Signed) V. GIBBS.

Lincoln's Inn, June 7th, 1804.

No. 3.

In the matter of the Hudson's Bay Company's Charter and their Grants to Lord Selkirk.

(Copy.)

QUESTIONS, AND OPINION OF SIR ARTHUR PIGOTT, MR. SPANKIE, AND MR. BROUGHAM.—JANUARY, 1816.

1st. Whether the exclusive trade, territories, powers and privileges granted by the Charter of Charles the Second, confirmed by the expired Act of King William, is a legal grant, and such as the Crown was warranted in making; and if it was, whether it entitles the Company to exclude the Canadian traders from entering their territory to trade with the Indians, and authorises the Governors and other officers appointed by the Company to seize and confiscate the goods of the persons so trading, without the license of the Company?

The prerogative of the Crown to grant an exclusive trade was formerly very much agitated in the great case of "The East India Company *versus* Sandys." The Court of King's Bench, in which Lord Jefferies then presided, held and decided that such a grant was legal. We are not aware that there has since been any decision expressly on this question in the Courts of Law, and most of the charters for exclusive trade and exclusive privileges to companies or associations, have, since the Revolution, received such a degree of legislative

sanction or recognition, as perhaps to preclude the necessity of any judicial decision on it. Much more moderate opinions were, however, entertained concerning the extent of the prerogative, after the Revolution, than prevailed in the latter part of the reign of Charles the Second, and in the reign of James the Second, and to those is to be attributed the frequent recourse which, after the Revolution, was had to legislative authority on such cases, and particularly in the very case of this Company, evidenced by the temporary Act of the 2nd of William and Mary, "for confirming to the Governor and Company trading to Hudson's Bay their privileges and trade;" a confirmation the duration of which the Legislature expressly limited to seven years and the end of the then next session of Parliament, and no longer : and part of the preamble of that Act is, in effect, a legislative declaration of the insufficiency and inadequacy of the Charter for the purposes professed in it, without the aid and authority of the Legislature; which legislative aid and authority entirely ceased soon after the expiration of seven years after that Act passed.

In 1745, indeed, the 18th Geo. II., cap. 17, for granting a reward for the discovery of a North-west Passage through Hudson's Straits, enacts, "that nothing therein contained shall any ways extend, or be construed to take away or prejudice any of the estate, rights or privileges of or belonging to the Governor and Company of Adventurers of England trading into Hudson's Bay;" but this provision gives no validity whatever to the Charter, and only leaves its effect and authority as they stood before that Act, and entirely unaffected by it.

These parliamentary proceedings may at least justify the inference that the extent of the prerogative in this matter was considered as a subject which admitted of great doubt, in times when the independence of the judges insured a more temperate and impartial consideration of it. They may, however, be perhaps considered as too equivocal to afford any certain and conclusive authority on the strict question of law.

Such rights, therefore, as the Hudson's Bay Company can derive from the Crown alone, under this extraordinary Charter, such as it is, may not be affected by these proceedings or declarations, and they may now rest entirely upon, and stand or fall by, the Common Law Prerogative of the Crown to make such a grant.

Upon the general question of the right of the Crown to make such a Grant, perhaps it may not be necessary for the present purpose that we should give any opinion. The right of the Crown merely to erect a company for trading by charter, and make a grant of territory in King Charles the Second's reign, may not be disputable ; and on the other hand, besides that this Charter seems to create, or attempt to create, a Joint Stock Company, and to grant an exclusive right of trading, there are various clauses in the Charter, particularly those empowering the Company to impose fines and penalties, to seize or confiscate goods and ships, and seize or arrest the persons of interlopers, and compel them to give security in £1,000, &c., &c., which are altogether illegal, and were always so admitted to be, and among other times, even at the time when the extent of the Prerogative in this matter was maintained at its height, to grant an exclusive right to trade abroad ; and even if, by virtue of their Charter, they could maintain an exclusive right to trade, we are clearly of opinion that they and their officers, agents or servants could not justify any seizure of goods, imposition of fine or penalty, or arrest or imprisonment of the persons of any of His Majesty's subjects. Probably the Company would have some difficulty in finding a legal mode of proceeding against any of those who infringe their alleged exclusive rights of trading, or violate their claimed territory ; for we hold it to be clear, that the methods pointed out by the Charter would be illegal, and could not be supported.

But we think that the Hudson's Bay Company and their grantee, Lord Selkirk, have extended their territorial claims much farther than the Charter or any sound construction of

it will warrant. Supposing it free from all the objections to which we apprehend it may, in other respects, be liable, the words of the Grant, pursuing the recital of the petition of the grantees, with a very trifling variation, and with none that can affect the construction of the instrument, are of "the sole trade and commerce of all those seas, straits, bays, rivers, lakes, creeks and sounds, in whatever latitude they shall be, that lie within the entrance of the Straits, commonly called Hudson's Straits, together with the lands and territories upon the countries, coasts and confines of the seas, bays, lakes, rivers, creeks and sounds aforesaid:" that is, within the Straits—and these limits are frequently referred to in the subsequent parts of the Charter, and always referred to throughout the Charter as "the limits aforesaid."

There is indeed (p. 10,) an extension of the right of trade, and His Majesty grants that the Company "shall for ever hereafter have, use and enjoy not only the whole entire and only liberty of trade and traffic, and the whole entire and only liberty, use and privilege of trading and traffic to and from the territories, limits and places aforesaid, but also the whole and entire trade and traffic to and from all havens, bays, creeks, rivers, lakes, and seas into which they may find entrance or passage by water or land, out of the territories, limits and places aforesaid, and to and with all the natives and people, inhabitants, or which shall inhabit within the territories, limits and places aforesaid, and to and with all other nations inhabiting any of the coasts adjacent to the said territories, limits and places aforesaid, which are not already possessed as aforesaid."

It is plain, therefore, that the Territorial Grant was not intended to comprehend all the lands and territories that might be approached through Hudson's Straits by land or water. The Territorial Grant then appears to be limited by the relation and proximity of the territories to Hudson's Straits. The general description applying to the whole, is the seas, &c., that lie within Hudson's Straits, and the lands, &c., upon the

countries, coasts, and confines of the seas, &c., that is, *Redden-do Singula Singulis*, the lands upon the countries, coasts, and confines of each of the seas, rivers, &c., naturally including such a portion of territory as might be reasonably necessary for the objects in view ; but it is not a grant of all the lands and territories in which the seas, rivers, &c., lie, or are situated, or which surround them to any indefinite extent or distance from them. Still less is it a grant of all the lands and territories lying between the seas, straits, rivers, &c., though many hundred or thousand miles or leagues of lands and territories might lie between one sea, strait, river, lake, &c., and another sea, strait, river, lake, &c., and though the quantity of land comprised in this interior situation, and far distant from any coast or confine of the specified waters, might exceed in dimensions the extent of many existing powerful Kingdoms or States. Within the straits, must mean such a proximity to the straits as would give the lands spoken of a sort of affinity or relation to Hudson's Straits, and not such lands as, from their immense distance (in this case the nearest point to Hudson's Bay being 700 miles, and from thence extending to a distance of 1,500 miles from it), have no such geographical affinity or relation to the straits, but which are not even approached by the Canadians through or by the straits in question. The whole Grant contemplates the straits as the access to the lands and territories therein referred to ; and as there is no boundary specified, except by the description of the coasts and confines of the places mentioned, that is, the coasts and confines of the seas, &c. Within the straits, such a boundary must be implied as is consistent with that view, and with the professed objects of a trading company intending, not to found Kingdoms and establish States, but to carry on fisheries on those waters, and to trade and traffic for the acquisition of skins and peltries, and the other articles mentioned in the Charter ; and in such a long tract of time as nearly 150 years now elapsed since the grant of the Charter, it must now be, and must indeed long since have been, fully ascertained by the

actual occupation of the Hudson's Bay Company, what portion or portions of lands and territories in the vicinity, and on the coasts and confines of the waters mentioned and described as within the straits, they have found necessary for their purposes, and for forts, factories, towns, villages, settlements or such other establishments in such vicinity, and on such coasts and confines, as pertain and belong to a Company instituted for the purposes mentioned in their Charter, and necessary, useful, or convenient to them within the prescribed limits for the prosecution of those purposes. The enormous extensions of land and territory now claimed appears therefore to us not to be warranted by any sound construction of the Charter; and if it could be so, we do not know where the land and territory of the Hudson's Bay Company, granted by this Charter, terminates, nor what are the parts of that vast Continent on which they have taken upon them to grant 116,000 miles of territory exempted from their proprietorship under their Charter.

Indeed, there may be sufficient reason to suppose that the territories in question, or part of them, had been then visited, traded in, and in a certain degree occupied by the French settlers or traders in Canada, and their Beaver Company erected in 1630, whose trade in peltries was considerable prior to the date of the Charter. These territories, therefore, would be expressly excepted out of the Grant; and the right of British subjects in general to visit and trade in these regions would follow the national rights acquired by the King, by the conquest and cession of Canada, and as enjoyed by the French Canadians previous to that conquest and cession.

No territorial right, therefore, can be claimed in the districts in question; and the exclusive trade there cannot be set up by virtue of the Charter, these districts being remote from any geographical relation to Hudson's Bay and to the Straits, and not being in any sense within the straits, and not being approached by the Canadian traders, or other alleged interlopers through the interdicted regions. Of course no violence

to or interruption of trade could be justified there under these territorial claims.

2nd. Whether the Hudson's Bay Company were warranted in making a Grant to Lord Selkirk, as one of their own body, of the immense district of territory described in Governor M'Donell's Proclamation, notwithstanding the opposition of part of the Proprietors of Stock; and after making such Grant, has the Company any right to exercise their jurisdiction in appointing Governors and other officers over that district; or can they grant or transfer such power to his lordship? If you should be of opinion that the Grant to his lordship is illegal, unwarrantable by the Charter, what measures ought to be taken to set aside the same?

The validity of the Grant to Lord Selkirk may be considered both as it affects the members of the Company and the public at large.

If, contrary to our opinion, the land and territory in question were within the Grant, then the Grant of so large a portion of territory as that to Lord Selkirk, being not less than 116,000 square miles, might perhaps seem an abuse of the Charter, which might justify the interference of the Crown. Because, though the Company might have a right to make grants of land, such Grant must be for the promotion of, or at least must be consistent with, the object of the Institution. But the Grant to Lord Selkirk tends to an establishment independent of the Company, inconsistent with the purposes of their Institution and its effects; erecting a sub-monopoly in one person, to the detriment both of the Company and of the public. The Company could confer no power upon Lord Selkirk to appoint Governors, Courts of Justice, or exercise any independent authority, nor could they, directly or indirectly, transfer their authority to him, to be exercised by him in his own name. Supposing the Grant of land to be such a Grant as falls within the powers of the Company to make, their superior lordship and authority would continue as before, and must be exercised through them.

3rd. Whether the jurisdiction given by the Act of 43rd Geo. III. to the Canadian Courts of Criminal Judicature, extends to the Territories of the Hudson's Bay Company, so as to entitle those Courts to try and punish offences committed within those territories? And whether Governor M'Donell, and Mr. Spencer, his Sheriff, can legally be tried before the Canadian Courts for the offence with which they now stand charged?

There seems no reason to doubt that offences actually committed in the territories and districts in dispute, where no Court of Judicature is or ever has been established, might, in point of jurisdiction, legally be tried by the Courts of Canada, under the 43rd Geo. III., Cap. 138; and indeed, unless this district was within the provisions of that Act, we cannot discover what territory was meant to be included in it; but we think that though the jurisdiction might be capable of being supported, the acts done by Messrs. M'Donell and Spencer could not be deemed larceny, and that they, or others acting in similar circumstances, ought not to be indicted or brought to a trial for the crime of larceny. They acted, perhaps erroneously, upon a claim of territorial dominion and of exclusive commercial privilege, and may be liable to be proceeded against as for a trespass or other injury to persons or property; but we think they could not be properly convicted on a charge of felony.

4th. Is it competent to the Governors and other officers already appointed, or that may be appointed by the Hudson's Bay Company, to seize and bring to trial before their Courts of Judicature, His Majesty's Canadian subjects who may be found trading within the Company's territories, for infringing the Company's monopoly, or for committing any other alleged crime or offence?

Supposing the Charter of the Company valid, and the districts in dispute to be within their limits, we should still doubt whether the Governor and Company have lawful power by the Charter to establish courts for the trial by the laws of England of offences committed therein. That power the

Company have never yet attempted to exercise, though nearly 150 years have elapsed since they procured their Charter. But if they should still possess the extraordinary power without further authority, legislative or regal, we should nevertheless think that no Courts there established would have authority to try and punish as an offence the act of going there simply; which, if the Grant be legal, could amount at the most only to a misdemeanour or contempt of the King's lawful authority, to be prosecuted at the suit of His Majesty. But the Charter itself seems to take the offence, as far as the Company are concerned, out of the jurisdiction of the local Courts by (illegally indeed) prescribing certain forfeitures, and declaring (page 12) "that every the said offenders, for their said contempt to suffer such punishment as to us, our heirs and successors, shall seem meet or convenient, and not to be in amprize (query, mainprize?) delivered until they and every of them shall become bound unto the said Governor for the time being, in the sum of £1,000 at least, at no time thereafter to trade," &c. A subsequent clause (page 16) authorizes the seising and sending to England those who come into their territories without authority. It seems, therefore, that the Courts in question would have no power to try as an offence at common law the mere coming into the Company's territories contrary to the prohibition in the Letters Patent, which point out other modes of proceeding, and legally confer no other powers applicable to the case.

If the question were merely a question of boundary between two acknowledged adjacent colonies or provinces, it might perhaps be determined by the King in Council, where we apprehend such a jurisdiction is vested, and has been exercised, but that probably would not set at rest the principal points, or prevent interference. The validity of the Grant of an exclusive trade might, we apprehend, be tried directly by *Scire Facias*, or incidentally in actions of trespass, which, however, might still leave other main points undecided; and the Company might perhaps be capable of retaining some part of

what has been granted to them, and might fail as to many others. In these circumstances, it appears that interests and pretensions so opposite, and which may be productive of so much confusion and disorder, and of consequences so dangerous and destructive to the persons and properties of those who, by reason of the failure of the ordinary means of protection afforded by the law, may be said to be peculiarly under the safeguard of Government, can only be effectually and satisfactorily adjusted and reconciled by Government, with the aid and authority of Parliament; and by that authority (after causing such an investigation into them as Government would, in such a case, probably feel it indispensable to make, and are fully possessed by the law officers of the Crown, and otherwise, of all the means of making,) due allowance would be made for such rights of the Company as were deemed legal and well founded, and protection and freedom secured to the Canadians as well as to the rest of the King's subjects, in the prosecution of that commerce which the Canadians have long enjoyed, and which the rest of the King's subjects have frequently, and whenever they have thought proper, carried on, and which, it is stated to us, they have never been hitherto attempted to be interrupted in by the Hudson's Bay Company.

No. 4.

OPINION OF RICHARD BETHELL, A.G., AND HENRY S. KEATING, S.G., UPON VARIOUS MATTERS CONNECTED WITH THE CHARTER OF THE HUDSON'S BAY COMPANY.

LINCOLN'S INN, *July*, 1857.

SIR,—We are favoured with Mr. Merivale's letter of the 9th of June ultimo, in which he stated that he was directed by you to transmit to us copies of two despatches from the Governor of Canada, inclosing the copy of a Minute of his

Executive Council, and extract from another Minute of the same in reference to the questions respecting the affairs of the Hudson's Bay Company, then under investigation by a Committee of the House of Commons.

We were also requested to observe from the former of those Minutes that the Executive Council suggest, on the part of Canada, a territorial claim over a considerable extent of country, which is also claimed by the Hudson's Bay Company, as owners of the soil, and with rights of government and exclusive trade under their Charter.

We were also requested to observe by the annexed Parliamentary Papers of the 12th of July, 1850, that the statement of the Hudson's Bay Company's rights as to territory, trade, taxation, and government, made by them to Earl Grey, as Secretary for the Colonies, on the 13th September, 1849, was submitted to the then law officers of the Crown, who reported that they were of opinion that the rights so claimed by the Company properly belonged to them, but suggested, at the same time, a mode of testing those claims by petition to Her Majesty, which might be referred to the Judicial Committee.

Mr. Merivale was further to annex a Parliamentary Return made in 1842, containing the Charter of the Company, and documents relating thereto ; and another of 23rd April, 1849, containing, among other papers, an Act of 2nd William and Mary, " for confirming to the Governor and Company trading to Hudson's Bay their privileges and trade."

The rights so claimed by the Company have been repeatedly questioned since 1850 by private persons in correspondence with the Secretary of State, and were then questioned to a certain extent, as appears by those despatches, by the present local Government of Canada.

Mr. Merivale was also to request that we should take those papers into our consideration, and report—

Whether we thought the Crown could lawfully and constitutionally raise, for legal decision, all or either of the following questions :—

The validity at the present day of the Charter itself.

The validity of the several claims of territorial right of government, exclusive trade, and taxation insisted on by the Company.

The geographical extent of this territorial claim (supposing it to be well founded to any extent).

And if we were of opinion that the Crown could do so, we were requested further to state the proper steps to be taken, in our opinion, by the Crown, and the proper tribunal to be resorted to ; and whether the Crown should act on behalf of the local Government of Canada, as exercising a delegated share of the Royal authority, or in any other way.

And, lastly, if we should be of opinion that the Crown could not properly so act, whether we saw any objection to the questions being raised by the local Government of Canada, acting independently of the Crown, or whether they could be raised by some private party in the manner suggested by the law advisers in 1850, the Crown undertaking to bear the expense of the proceedings.

In obedience to your request, we have taken the papers into our consideration, and have the honour to report—

That the questions of the validity and construction of the Hudson's Bay Company's Charter cannot be considered apart from the enjoyment that has been had under it during nearly two centuries, and the recognition made of the rights of the Company in various acts, both of the Government and the Legislature.

Nothing could be more unjust, or more opposed to the spirit of our law, than to try this Charter as a thing of yesterday, upon principles which might be deemed applicable to it if it had been granted within the last ten or twenty years.

These observations, however, must be considered as limited in their application to the territorial rights of the Company under the Charter, and to the necessary incidents or consequences of that territorial ownership. They do not extend to the monopoly of trade (save as territorial ownership justi-

fies the exclusion of intruders), or to the right of an exclusive administration of justice.

But we do not understand the Hudson's Bay Company as claiming anything beyond the territorial ownership of the country they are in possession of, and the right, as incident to such ownership, of excluding persons who would compete with them in the fur trade carried on with the Indians resorting to their districts.

With these preliminary remarks we beg leave to state, in answer to the questions submitted to us, that in our opinion the Crown could not, with justice, raise the question of the general validity of the Charter ; but that on every legal principle the Company's territorial ownership of the lands, and the rights necessarily incidental thereto (as, for example, the right of excluding from their territory persons acting in violation of their regulations), ought to be deemed to be valid.

But with respect to any rights of government, taxation, exclusive administration of justice, or exclusive trade, otherwise than as a consequence of the right of ownership of the land, such rights could not be legally insisted on by the Hudson's Bay Company as having been legally granted them by the Crown.

This remark, however, requires some explanation.

The Company has, under the Charter, power to make ordinances (which would be in the nature of by-laws) for the government of the persons employed by them, and also power to exercise jurisdiction in all matters, civil and criminal ; but no ordinance would be valid that was contrary to the Common Law, nor could the Company insist on its right to administer justice as against the Crown's prerogative right to establish courts of civil and criminal justice within the territory.

We do not think, therefore, that the Charter should be treated as invalid because it professes to confer these powers upon the Company ; for to a certain extent they may be lawfully used, and for an abuse of them the Company would be amenable to law.

The remaining subject for consideration is the question of the geographical extent of the territory granted by the Charter, and whether its boundaries can in any and what manner be ascertained. In the case of grants of considerable age, when the words, as is often the case, are indefinite or ambiguous, the rule is, that they are construed by usage and enjoyment, including in these latter terms the assertion of ownership by the Company on important public occasions, such as the Treaties of Ryswick and Utrecht, and again in 1750.

To these elements of consideration upon this question must be added the enquiry (as suggested by the following words of the Charter, viz., "not possessed by the subjects of any other Christian prince or state"), whether, at the time of the Charter, any part of the territory now claimed by the Hudson's Bay Company could have been rightfully claimed by the French as falling within the boundaries of Canada or Nouvelle France, and also the effect of the Acts of Parliament passed in 1774 and 1791.

Under these circumstances, we cannot but feel that the important question of the boundaries of the Hudson's Bay Company might with great utility, as between the Company and Canada, be made the subject of a quasi-judicial inquiry.

But this cannot be done except by the consent of both parties, namely, Canada and the Hudson's Bay Company; nor would the decision of a Committee of the Privy Council have any effect as a binding judicial determination.

But if the Hudson's Bay Company agree to the proposal of the Chief Justice of Canada, that the question of boundaries should be referred to the Privy Council, it being further understood by both parties that the determination of the Council shall be carried into effect by a declaratory Act of Parliament, we think the proceeding would be the best mode of determining that which is, or ought to be, the only real subject of controversy.

The form of procedure might be a petition to the Queen by Chief Justice Draper, describing himself as acting under the

direction of the Executive Council of Canada, unless, which would be the more solemn mode, an address were presented to Her Majesty by the Canadian Parliament.

Counsel would be heard on behalf of Canada, and of the Company.

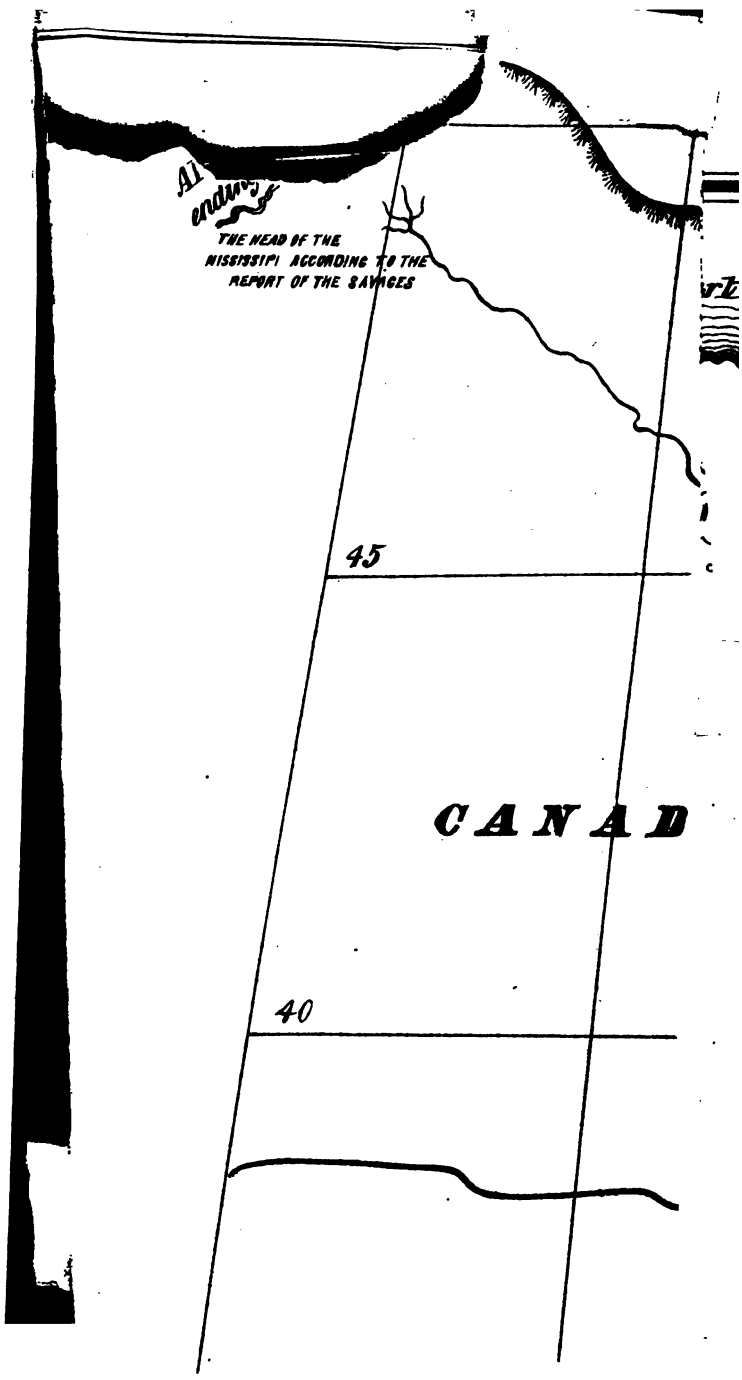
We are, &c.,

(Signed)

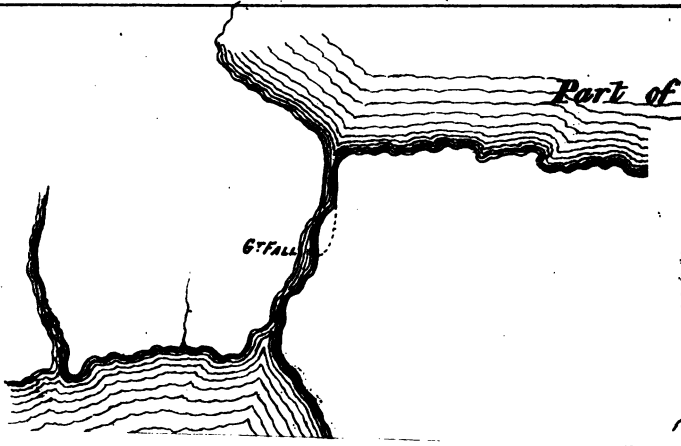
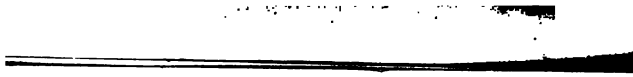
RICHARD BETHELL,
HENRY S. KEATING

The Right Honourable

H. Labouchère, M.P., &c.







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